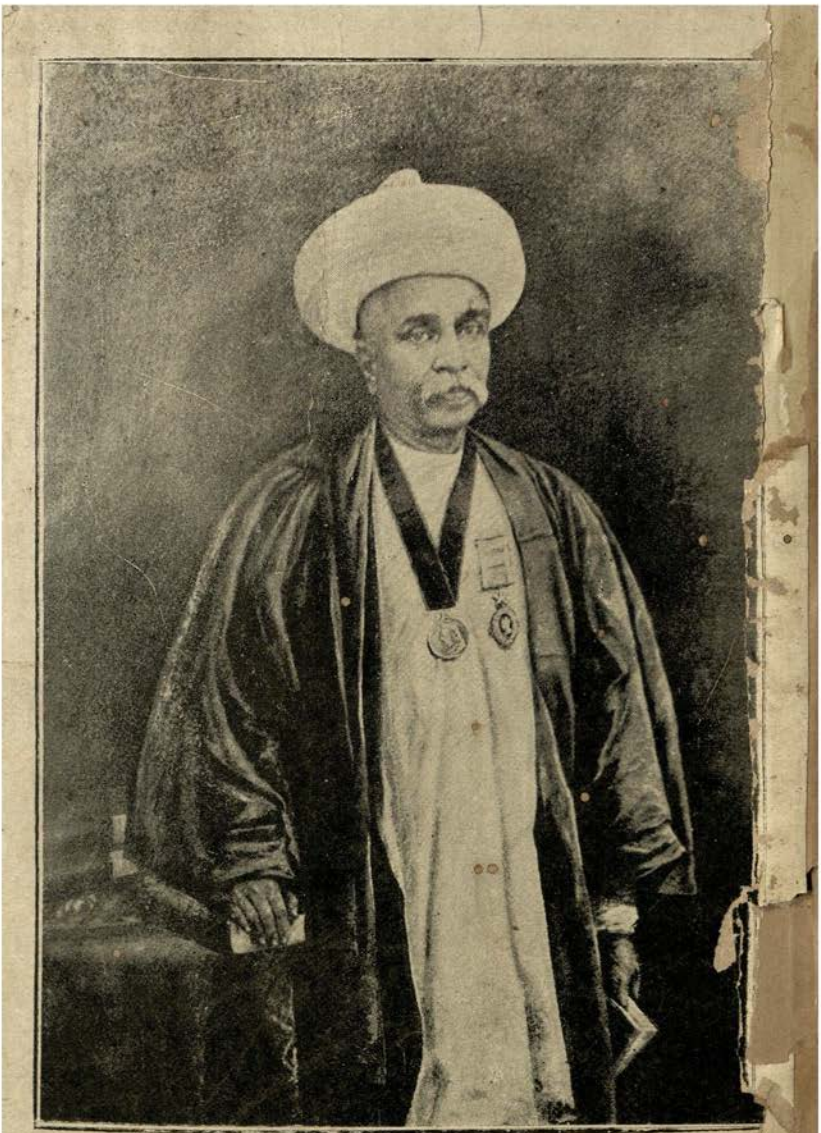
00026283

NOT TO BE ISSUED
OUT OF THE LIBRARY.



Digitized with financial assistance from
H P Parekh FOUNDATION
An Initiative by HDFC
WITH YOU, RIGHT THROUGH
on 28 December, 2018

WRITINGS AND SPEECHES

OF THE

LATE HONOURABLE RAO SAHEB

SHVANATH NARAYAN MANDLIK, C. S. I.,

॥ नहिसत्यात्परोधर्मः ॥

f.c.
4112164

EDITED BY

NARAYAN VISHVANATH MANDLIK B. A.,

B. 2366

ROYAL ASIATIC LIBRARY OF THE BOMBAY BRANCH OF THE

WITH

A SKETCH OF HIS LIFE

BY

26283 a.

DAMODAR GANESH PADHYE, M.A.,

PRINCIPAL, GOCULDAS TEJPAL HIGH SCHOOL.

Yy. 8. 33

1896.

(*All Rights Reserved,*)

923.454
Man/Man/Wri
26283

BOMBAY:

PRINTED AT THE "NATIVE OPINION" PRESS.

00026283

PREFACE.

In the following volume I have carried out a long cherished design of collecting, so far as might be found possible, all the writings and speeches of my late lamented father. I hope it will be considered that in this I have done the public a service, as well as discharged, to the dearest and most honoured of parents, a pious debt. A glance at the table of contents will indicate even to the stranger in the matter how varied and how fruitful were the services to his countrymen of Rao Saheb Vishvanath Narayan Mandlik. Those who admired, and those who shared his public labours in Bombay and in India generally, will alike be glad, I believe, to have this permanent, if imperfect, record of his work.

I am greatly indebted to my cousin Mr. Damodar K. Karandikar, Pleader, High Court, for the assistance he has given me in putting this volume together and in seeing it through the Press. And I have to thank no less heartily, Mr. Damodar G. Padhye, M. A., for the sketch of my father's life which he has kindly contributed. I have also to thank my respected Professor, Dr. P. Peterson, for advice and assistance always generously put at my disposal.

N. V. MANDLIK.

The Hermitage, Cumballa Hill,
Bombay, 13th August, 1896.

A SHORT SKETCH

OF

THE LIFE

OF

THE LATE RAO SAHIB V. N. MANDLIK C. S. I.

"Lives of great men all remind us
We can make our lives sublime;
And departing, leave behind us,
Foot-prints on the sands of time."

—*Longfellow.*

Introductory.

The late *Rao Sahib* Vishvanath Narayan Mandlik undoubtedly stands well the test of greatness laid down by Longfellow in these immortal lines. He has certainly left behind him "foot-prints on the sands of time," that time itself cannot efface. Not only was he a great man of his times,—pious, learned, respected, and useful to the generations amongst whom he lived—but also one of those claimants to an honourable mention in history, whose vision transgresses the limits of time and space, who are born as much for posterity as for contemporaries, and who cannot help doing, in the short span of life granted to man in this world, work, the influence of which extends long in the futurity, adding lustre to their name and conferring benefits upon, and elevating by their example present and future generations. The lives of such men are a noble study; and we trust that the short sketch, we are giving below, will more than prove that the *Rao Sahib* V. N. Mandlik's life was one of this kind.

Early life and education.

Mr. Mandlik was born on the 8th March 1833 A. D, in a village named Muruda, in the Ratnagiri District. He was thus a native of those rugged and broken Western slopes of the Sahyàdri range, which separate the table-land of the Dekkan from the Arabian Sea, and which, under the more familiar name of the Konkan, have been

distinguished f r the acute intellect and the patient industry of their inhabitants. The Peshwas were Natives of the Konkan, as was almost every Brahmin family, that rose to distinction during the great Maratha upheaval of the 17th and the 18th centuries, under Sivaji and his successors. The Mandlik family was one of this class. It had a high social and political status, being connected by marriage with the Peshwas themselves. One of its members, the great-grand-father of the subject of our sketch, held the high office of *Subhedar* or Provincial Governor. Born of a race that has played no mean *role* in history, and of a family that had a hereditary right to shine and to lead and serve the people, young Vishvanath showed, even at an early age, that he had talents and capacities, which marked out for him a bright and successful career, even under the changed circumstances of British rule. His first lessons were received under the parental roof, from his grandfather Dhondopant. He soon learnt all that his village school had to teach him. When only ten, he was sent to Ratnagiri, to learn English; and there he became a pet student of that excellent teacher *Rao Bahadur* Ramchandra Balkrishna, whose memory is still cherished in those parts. Spurred by him, Mr. Mandlik came, in spite of many difficulties, to Bombay; and at fourteen, joined the Elphinstone Institution for further education. He soon secured the Clare scholarship and attracted the attention and secured the personal interest of the distinguished scholars, such as Dr. Harkness, and Professors Patton and Green who then adorned the Professorial chairs of the institution. Profiting by their special care, Mr. Mandlik won prizes, and so far distinguished himself above his comrades that he was asked, whilst yet a student in the highest class, to act as Professor of Mathematics, during a month's leave, Prof. Patton had taken. The Board of Education, the then directing head of the Educational Department, thus expressed its satisfaction with the work, young Mr. Mandlik did as Professor:—

"Viswanath Narayen, whom we mentioned in our last report as the best man of the year, and who is again the most distinguished student of this year, had charge of the third year's students during Prof. Patton's absence in October; and he proved himself to be a successful teacher".—Report for 1851-52, P. 49.

Mr. Mandlik passed with the highest credit the Normal scholarship Examination, the then highest educational test existing; and stood first in all subjects but one, though he was given prizes only in two branches according to a rule existing at the time. At nineteen, he had completed his College course in Bombay and Prof. Patton strongly advised him to go to England to compete for the Indian Civil Service. But his family would not listen to the proposal and Mr. Mandlik had to begin his career as he was,—a career which gave him laurels, which would hardly have come to him, had he gone to England and returned the first native civilian of Western India.

Begins life as Government servant. Influence of his official superiors on the formation of his character.

It was with Government service that Mr. Mandlik began his life. It came this way. Colonel, afterwards, Sir Le Grand Jacob, who was then Political Agent in Sindh, wanted a personal assistant and he asked Dr. Harkness to recommend to him for the work a young man of good parts and character. The learned Professor recommended his favourite pupil—young Mr. Mandlik. Sindh was then a distant unknown land, with imperfect communication with his home in the Konkan, and his parents were unwilling to let him go so far; but Mr. Mandlik accepted the offer; and well was it for him that he did so. Colonel Jacob soon took a liking to his young and able assistant and his interest in him never slackened till life lasted. In his official capacity, Mr. Mandlik also came in close contact with such high-minded administrators as Sir Bartle Frere and Mr. James Gibbs. All of them highly valued his abilities and respected the force of character he showed. Mr. Gibbs, in particular, took special interest in him and did all he could to push him up in life. It was not, however, for this, that Mr. Mandlik was specially indebted to him or to the other high-minded Europeans, under whom he served. They exercised a very benignant influence upon his mind, and it was whilst serving under them, that Mr. Mandlik developed that zeal, industry, punctuality, and singleness of purpose, that sturdy independence, rectitude of intentions, and high conception of duty, which, above all things else, were the special characteristics of the higher sphere of private and public life, which he occupied after-

wards. He never forgot the deep debt he thus owed to them. Nay, he was fond of expressing amongst friends his obligations to them. To give the due to those who have specially influenced one's character, certainly indicates a nobleness of mind and heart, not always to be found in men, who, like Mr. Mandlik, attain to greatness and distinction, mainly through the force of innate talents and strength of mind.

Resigns Government service and becomes a pleader practising at Bombay.

A spirit like Mr. Mandlik's could not possibly long remain reconciled to the narrow groove of official drudgery in subordinate positions; and a native of India could not then, as he cannot even now, hope to find in Government service a free field for the display of his talents and abilities. The *Reis and Rayyat* remarked in its obituary notice of Mr. Mandlik, that under the Peshawas, he would surely have risen to the highest dignity and position amongst his countrymen, and that had he been born in England, he would have risen to the rank of at least a Cabinet Minister. But no such openings lie before any native under the British rule, whatever be his talents and capacities. Mr. Mandlik was not long in discovering this. After ten years of Government-service as Dy. Ed. Inspector, Sub-Judge, Curator, Government Book Depot, and personal Assistant to the Income Tax Commissioner, he determined to seek fresh fields, where his abilities could have free scope. He, therefore, resigned his appointment in 1862, and taking to law passed the High Court Pleader's examination. On being duly enrolled as a pleader, he began to practise at Bombay and showed that what was a loss to Government was a great gain to himself and to his countrymen. Mr. Mandlik's career in Government service, was thus very short; but it was as varied as it was successful. None of the offices in which he served, were sinecure; and as Mr. Mandlik would throw his heart and soul in everything he undertook, the knowledge and experience he gained in Government service, had a value of its own to the future leader of the people and legislator. Probably, it was this knowledge and experience that saved him from becoming one of those doctrinaire politicians, who are more at home on the public platform than in the Council Chamber.

His merits as a pleader and lawyer

Mr. Mandlik began his practice as pleader in 1863. The *Sadar Adawlat* had then been but recently converted into a High Court by an Act of Parliament. There were few pleaders then who knew English, and few English Judges who knew well the civil law of the land. A man of Mr. Mandlik's talents had, therefore, a wide field ; and he soon secured a lucrative and an honourable practice. He won the esteem of the judges and the confidence of a large number of suitors. He had a profound knowledge of law—of Indian Civil Law in particular. He was a ready debater and always studied his cases well. Few could equal his industry, zeal, and argumentative power, and fewer still, his punctilious punctuality and fearless advocacy. Once, he had to appear for the accused in a murder case in the Poona Sessions Court and missed the train, which he should have taken to be there in time. That was the only occasion on which Mr. Mandlik was not in time ; and the cause of it was an unexpected detention in the High Court. But Mr. Mandlik would not brook the idea of missing an engagement and he travelled to Poona in a special train, reaching the Court he had to appear in, exactly at the time appointed. Once, during the progress of the celebrated *Khoti* cases of the Konkan, with which his name is specially identified, he was forestalled by the pleader for Government. Mr. Mandlik could not by the ordinary steamer go to Ratnagiri in time to meet him in Court. Not daunted, he went there by a special steamer. This incident, highly characteristic as it is, scarcely gives an idea of the zeal and industry with which he worked for the cases he took up. The most noteworthy of these were the *Khoti* cases. He sacrificed his money and his health for them ; for it was the shock his brains and his system received in the course of this work, during its final stages in the High Court in 1887, that ultimately developed into the ailments which took him away, strong and naturally healthy as he was, at the comparatively premature age of fifty seven.

A noble champion of his profession.

It is needless to say that he was an extremely honest pleader; and one of the few who could never be approached through touts. He cared less for money than for professional honour and his high ideal of

duty and punctuality. He once made an engagement with a suitor, whose case, he knew well, would make a fortune; but the client came not at the appointed time and Mr. Mandlik refused to take up his case. Examples like his, could not but raise the tone of the native bar and secure for it, the respect and esteem, in which it has since been held by the judges and the suitors, as well as by the general public. Mr. Mandlik was always a sturdy champion of the rights, privileges, and dignity of his profession. He strove hard to obtain for High Court Pleaders the same status on the Original Side, as they have on the Appellate. He was offered permission to have it, for himself and one or two more, as cases of special favour. But he fought for the profession and not for self and declined the offer, as did the others, following his example. It was mainly through his exertions that the Legal Practitioners' Act was not extended to the Bombay Presidency. Zealous as he was in promoting the dignity and the prospects of his profession, he was equally so in keeping up its tone and purity. But for his lead, the Bombay Bar would at this time have included a gentleman whom the High Court, on the representation of the profession, refused, for reasons that may well be left unmentioned, to give the necessary permission, in spite of his having passed the required test.

Prizes of the Bar.

His principal rivals in the profession were the late Messrs. Shantaram Narayan and Justice Nanabhai Haridas. In 1873, an acting Judgeship of the High Court fell vacant and both Messrs. Mandlik and Shantaram Narayan were recommended for the post. For several reasons it was no smooth course to decide between the two; and the difficulty was got over by conferring the appointment, on the ground of seniority, on Mr. Nanabhai Haridas, who thereby also got permanently the Government Pleadership, when it became vacant by the death of Mr. Dhirajlal Mathuradas. Mr. Mandlik since then several times acted as Government Pleader. In 1884, Mr. Nanabhai was confirmed as a Judge of the High Court, and Mr. Mandlik, as the Government Pleader. It is hardly a secret, that Mr. Mandlik would have been, had he lived longer, the successor to Mr. Justice Nanabhai on the High Court Bench, on the latter's death. But the fates took him away before he could get that highest prize of the Bar,—a prize to which he had such high claims.

The variety of his occupations and pursuits.

It is not, however, merely as a lawyer of eminence that Mr. Mandlik is best known to fame. Money-makers there are many, and so also men, who have talents and who rise high in their profession. But there are few who make it a life's business to make the best use of their talents and do all they can to lead and serve their fellow subjects and do the good that lies in their power to present and future generations. Mr. Mandlik was one of such men. His professional work scarcely represents half the occupations of his life. His activities were many-sided. He was a journalist and an author of great merit. He was a very active member of the University and of the Municipal Corporation. He was foremost in all the public movements of his time. He was a politician, whom the people trusted and the Government esteemed. He wielded an immense social influence and he never consciously misused it. It was on this multifarious activity that his reputation was based, and on which rest his claims to find a place in the history of his province, if not of his country.

Mr. Mandlik and the Municipal Corporation.

His civic life began with his appointment as a Justice of the Peace in 1865. In the hands of the J. P.'s was then vested the duty of looking after the sanitary welfare of the city of Bombay. But they formed a merely consultative body, powerless to effectively check or control the executive head, who was appointed by Government, and who therefore, wielded the real power. When Mr. Mandlik became a J. P., the head of the Municipal executive was the indomitable Mr. Arthur T. Crawford, whose eminent talents and grand conceptions were equalled only by his recklessness and extravagance. Loans after loans were issued and the Municipal Treasury was brought on the verge of bankruptcy. It was, therefore, peremptorily necessary to fight the battle of economy; and Mr. Mandlik formed, with the late Mr. Naoroji Fardunji, Mr. Forbes, and others, a band of strenuous opponents of extravagance and visionary schemes. But they could not remedy the evils so long as Government could swamp the majority by creating as many J. P.'s, as they liked. Limitless

expenditure could not, however, go on long; and the inevitable crisis came soon, and Government found it necessary to put an end to the Crawford regime. Municipal affairs were taken out of the hands of that gentleman and a more sober administrator appointed. The evil of a defective constitution, however, remained unremedied; and the leaders of the popular party set to work to have it so changed as to make a repetition of the Crawford regime an impossibility. Their labours were crowned with success in 1872, when an Act was passed giving to Bombay a direct representation of the people in their Municipal Government. The Bench of Justices gave place to a Corporation, consisting of 64 members, 16 of whom were to be elected by the Justices and 32 by the rate-payers, and the remaining 16 were to be nominated by Government. The executive power was vested in a smaller body of 12, called the Town Council. The first elections under the Act took place in 1873. Mr. Mandlik, who had striven hard for the change effected in Municipal Government, was elected a member of both the Corporation and the Town Council. The connection so begun continued till life lasted; and Mr. Mandlik never slackened in his zeal for the good of the city or in his regard for the interests of the rate-payers. He particularly distinguished himself during the debates on the Contagious Diseases Act system and on the still-disputed drainage question. His colleagues in the Corporation marked their appreciation of his eminent services by choosing him their Chairman in 1879 and again re-electing him to the office next year, thus twice conferring upon him, the highest unofficial honour that a citizen of Bombay can aspire to, at the hands of his townsmen. His Chairmanship was an eventful one. He had, in his capacity as Chairman, the honour of requesting Sir R. Temple to open the Tulsi Water Works, and was presented with a silver and ivory hammer, as a memento of the occasion. The debates in the Corporation are often lively; but few could be so lively and stormy as those on the local Lock Hospital and Malabar Hill Reservoir Frauds questions, that took place, while he was Chairman. On those and other occasions, he performed his duties with a knowledge of the written and unwritten rules of debate, with an independence, an even-handed impartiality, and yet with an over-flowing courtesy, which elicited for him the respect and admiration of his colleagues, European and Native alike. His whole work in the Municipality was, indeed,

noble record of which any one could be proud. As ordinary member, or a member of a committee, as a debater or Chairman, as an advocate of economy or the friend of the poor,—in every capacity that came to him, he showed remarkable ability and zeal, patience and industry, sound reasoning and fearless advocacy. These qualities were always fully appreciated and duly acknowledged. The general public, Rate-payers or J. P.'s, never failed to return him to the Corporation; and his colleagues there showed tangibly their recognition of his services and his abilities by twice electing him their Chairman. His death has, therefore, a special loss to the Municipal Government of the city. At a meeting of the Corporation, held on the day of his death, on the motion of Mr. Grattan Geary, the President, seconded by Dr. Blaney the following Resolution was passed unanimously:—

"The Corporation with deep regret record their sense of the loss sustained in the death of *Rao Sahib* Vishwanath Narayan Mandlik, C. S. I., who for the last quarter of a century, rendered distinguished services to the city, in the Bench of Justices and in the Municipal Corporation. A leader of the native Bar, a distinguished scholar, and an eminent member of the Bombay Legislative Council, he was the first representative from this Presidency, selected for the honour of a seat in the Legislative Council of India.

* * * * * *

As a mark of respect to the memories of the two deceased members (Mr. Mandlik and Dr. Phillip C. De Souza who also had died about the same time,) the Corporation do now adjourn without proceeding to the transaction of business."

Mr. Geary in proposing the Resolution thus highly eulogized Mr. Mandlik's abilities, attainments and services:—

"* * * * The Rao Sahib Vishwanath N. Mandlik, during his long and honourable career, has rendered distinguished services to the Presidency and the city. He was amongst the leaders of the Bar and an authority on Jurisprudence. In the Legislative Council of this Presidency, his talents and his knowledge of affairs, enabled him to accomplish much useful work. His sound common-sense, his untiring industry, his breadth of view and his known probity, acquired him high honour and the confidence of the Government and of the community. He was a man of great erudition, with a knowledge of Hindu Law, not often equalled. He was selected for the high distinction of being the first member of this community, who was selected to fill a seat on the Supreme Legislative Council of India. He was a steady and consistent advocate of wise reform, and did much to advance the cause of Local-Self-Government. When the Municipal Act of 1872, which widened the basis

of Self-Government in this city, was drawn up, he was consulted and his advice was of considerable service. In this chamber, he often gave his fellow-citizens the benefit of his experience and sound judgment. When the present Municipal Act was on the anvil, he devoted time and attention and wise counsel to the work. Had he been spared to continue in our midst, he cou'd have aided us by his presence, his countenance, and his sympathy. We all deplore his loss, and as a tribute of respect to his memory, the Corporation will now adjourn."

We will also gladly make room for a few extracts from Dr. Blaney's speech on the occasion,—the last tribute he paid to the friend, with whom he had worked so long and so cordially:—

"* * * * For one quarter of a century, I was intimately associated with him, and I confess that he seemed to me in his earlier days a marvel of industry. Many years ago, it was apparent that he was a very hard worked man; and as years went on, his work became harder, and I have no doubt, that he has succumbed at last to the influence of over work. I know that sometime ago, his friends, who were regardful of his health, asked him very earnestly to retire from public life and to take that relaxation, which seemed to them to be necessary for the preservation of his health and the prolongation of his life. He put all those propositions aside, though he must have been feeling the infirmity of age creeping upon him, and declared that he would not retire but would perform, as long as he possibly could, his public duties as a public citizen. . . . . And not only did he refuse to retire into peaceful life and there to preserve his health, but he continued to work on so assiduously that he had very little time left to himself. From my personal knowledge, I can say that he was employed from 4 o'clock every morning until he retired to bed at night. But the two points of excellence in the character of the Rao Sahib were that he was not only in very great earnest with all the duties he undertook, but he certainly manifested it in the Town Council here and in the Corporation, in the series of years, during which he was connected with the Corporation. Not only was he a man of very sound judgment; but he was a man of unimpeachable integrity and a man of independent opinions too. The President has justly pointed out that he was a leader in municipal progress. All the votes he ever gave, all the speeches he ever made, in this Corporation, were for the progress of municipal institutions and for the working of Local Self-Government with success. In this respect, he truly seemed to me to possess the spirit of an Englishman. . . . . I think, that points him out, as the President has justly shown him, a man of erudition and of singularly strong commonsense. Then, what were his general sympathies? He was the leader not only of his own special community but he was looked up to as a leader by the whole Hindu community of Bombay."

Another sphere of Mr. Mandlik's sustained activity and interest was the University and the cause of education in general. Those who remember him only as a prominent leader of the orthodox party, with which he seemed to have so closely identified himself in his later days, will be surprized to learn, that his first energies and labours as a patriot, were directed towards the promotion of female education amongst his countrymen. Whilst he was at College, the Students' Literary and Scientific Society, which had been shortly before formed under the guidance and direction of the paternal Professors of the time, and of which he continued to his life's end a zealous and useful member, being also its Secretary for a time and then the President, opened schools for girls; and as there were not funds enough to engage a full staff of paid teachers, young Mr. Mandlik and a few of his College friends undertook to teach there without any remuneration whatsoever. A sufficient fund was afterwards raised and the schools were provided with a regular paid staff and were otherwise placed on a solid basis. For a long time, however, after this, Mr. Mandlik took an unflagging interest in these schools and always favoured at least the primary education of girls. Not that he was opposed to the higher education of females. It was in matters of detail, as regards the nature, the constitution, and the curriculum of studies, that differences arose between him and the more advanced party of the day,—the party that has founded, for example, the Alexandra School and the Poona High School for Girls, or say the *Sarada Sadana* of *Pandita* Ramabai. It may be mentioned here, that almost all the ladies of Mr. Mandlik's family, girls born there in or brought into it by marriage, know the three "R" s and much more and were consistently encourged by him in needle work, embroidery, and other innocent accomplishments.

Services as an educationist—female education.

A friend of female education after his own ideas, as he was, he was necessarily a greater friend still of education to males—higher, primary and secondary, all alike. We will, however, dwell specially on his work in connection with the local University, to a Fellowship of which he was appointed in 1862. He was several times an examiner in Marathi,

Mr. Mandlik and the University of Bombay.

Gujerathi, and Sindhi, and for fourteen years successively, in Law, at the LL. B. Examination. As such, and as examiner on several occasions, in his earlier career, at the High Court Law Examinations, he showed himself to be in close sympathy with the students, but not an encourager of cram or of cheap passes with insufficient knowledge. Above all, he was most honest and unbiassed, plucking his friends' sons, nay even his own near relations. He was a friend of the Vernaculars and gallantly opposed their unfortunate expulsion from the higher University Examinations in Arts. He was, in fact, an advocate of variety in the subjects prescribed, so that the *alumni* of our University may receive a training worthy to be called "Liberal" education. He was, therefore, deadly opposed to the change which drove away all higher Mathematics except Trigonometry from the compulsary subjects for our Arts' Examinations. He was never, however, wantonly in favour of a system of perpetual raising up of the standard or of examination after examination, which leaves no breathing time to the poor students and crushes all energy and originality in them. He was a Syndic from 1873 to 1888, twice a member of the Board of Accounts, and in 1839, had the high honour of being selected the Dean in Arts. He was the first native to be so honoured; and we may be pretty well certain, that, had he lived longer, he would have been appointed the Vice-Chancellor, perhaps the first native to be so honoured. His services were highly appreciated by his colleagues in the University, as well as by the outside public. So, when his friends and admirers resolved, in 1887, to commemorate his services to his country, even in his lifetime, in a befitting manner, they thought it most appropriate to permanently associate his name with the University, to which he had done so many services, and for so long a time. In announcing their offer, Sir Raymond West, speaking as Vice-Chancellor at the Convocation in January 1888, gave this striking testimony to his friend's services and merits.

"I am sure that, whatever views different persons may take of the line, which the *Rao Saheb* has adopted either in politics or in social movements, or any other ways, every one will admit that, in this University, he has been a faithful and a devoted sustainer and supporter of learning. His services have been constant and unremitting; and nothing can give us greater pleasure than to find that he is so highly appreciated, and that his name is to remain for ever in the golden books

of this institution. He will be enshrined amongst the best and most deserving men of our institution, uniting within himself the attributes of a Sulpicious, a Varro, and a Mascenas and the fame of them all.'

Speaking as Vice-Chancellor of the University at the first Convocation, held after the death of Mr. Mandlik, Dr. Mackichan thus spoke of the loss they had all sustained there-by :—

"The *Rao Sahib* Viswanath Narayan Mandlik, who was so long one of the chief ornaments of the Senate, has passed away amid the regrets of the whole community. We miss to-day the intellectual presence which has often lent dignity to these assemblages and strength and character to our academic debates. Himself a man of learning and a patron of learning, he has left to the students of this University, the example of a life devoted to the pursuit of higher aims than mere worldly success, of high intellectual gifts consecrated to the advancement of true learning. And this example was rendered all the more valuable by the simple life in which it was embodied, and the independence of character which sustained it. Straightforwardness and simplicity, honesty and energy of purpose, always manifest even to those who differed most widely from him—these were some of the outstanding feature of the life, to which as a University, we this day pay tribute."

His public life as political leader of the day.

The University and the Municipal Corporation are spheres for permanent activity and continuous work to the leading citizens of Bombay. We have seen how Mr. Mandlik aquitted himself as a member of these two institutions. It is needless to say that a leader, so zealous in the cause of truth, learning and progress, was also foremost in all those institutions and movements, which constitute the public life of Bombay, and which are the embodiment of that literary and political activity, which, no less than her industrial enterprize, have won for Bombay the proud title of *Urbs Prima* in India. He was always a zealous member of the popular party, ever ready to advocate the people's cause and to speak out his mind, without fear of the party opposite, be it Government or any section of the public, European or native, old-fashioned "*ma-bap*" politicians, or the younger generations of social and political radicals. Between the latter and Mr. Mandlik, differences of principles and methods had, as he grew up in years, gradually sprung up, as they will always do between the young and the old in a society of progressive ideas,—and that the educated natives of India are in social as well as political matters

essentially progressive, so far at least as the theories, plans, and aspirations are concerned, no one will doubt. It has been well said that a man ends, if he does not begin with Conservatism. So, even the advanced principles of Mr. Mandlik began to appear to the younger generation of the popular party, to be too halting and antiquated to be of much use any longer. Hence it was, that Mr. Mandlik, who was one of the first outspoken critics and advocates of the people's cause and one of the founders and the most prominent members of the Bombay Association and of the Bombay Branch of the East India Association, came to be less and less in evidence in the Congress and other new and forward movements, that had come into existence in India in the later years of his life. Yet, almost to the last, there could scarcely be a public meeting for political purposes, at which *Rao Sahib* Vishwanath Narayan Mandlik was not announced to be one of the speakers;—so mighty was the influence he wielded and the weight his name carried with a large section of the public,—too large and powerful to be ever neglected with impunity. Even now, his name has a magic of its own to many ears. An American gentleman has been latterly busy in India, collecting materials for a comprehensive,—perhaps too comprehensive—work giving the lives of representative Indians of modern times. He was lately in Bombay and had necessarily to appeal for information to gentlemen of note and position in the city whose lives he had to publish and who were to be the patrons of his work. Many of these urged upon him not to fail to give a life of Mr. Mandlik in his work, if at all he intended to make it one of weight and value. Some actually refused to have anything to do with it, if the *Rao Sahib's* life was not there-in. The American gentleman had, therefore, to exert himself and procure from a friend, of the family a life of the *Rao Sahib*, though the writer at any rate was not over-anxious that it should appear in a work of the kind the American gentleman has on hand.

Mr. Mandlik as a member of the local Legislative Council.

But the period of Mr. Mandlik's life, during which the differences between the new and the old were widening more and more, was precisely the period, when a new sphere of activity, by far more important and practically useful than the Congress or the Presidency Association platforms can possibly be, was more and

more opening out to him. The trusted ardent leader of the people had been taken from the irresponsible public platform to the soberer atmosphere of the Council Chamber. The Government of Sir Philip Wodehouse made a new departure in the process of nominating the Additional Members of the local Council. Hitherto, only Chiefs and Sirdars and rich *Shetyas*, almost all of the time-honoured *"ma-bap"*, *"jo hukum"* type, had been selected for the honour. A new field of recruitment, a far more rich and productive one, it need scarcely be pointed out, was opened up in 1874, with the nomination of Mr. Mandlik to a seat in the Legislative Council of Bombay. Well was it that the experiment was begun with a man of such sterling worth as Mr. Mandlik. The selection ensured the success of the new venture, as Government thought it to be. Mr. Mandlik fully recognized the responsibilities on him; and he gave as much satisfaction to those who had selected him for the honour as to those—the general public—who had hailed his appointment with unanimous approval and enthusiasm. A man of his abilities and attainments and of his character, could not but be a success. In him were combined all the necessary conditions for it. He was a ripe scholar and a man of a judgment of his own. He was a clever lawyer, well-versed in the art of debate and the exposition of his case. He was industrious and would never speak without book. He had a considerable official experience and had an intimate knowledge of the *mofussil*. He was a man of principles and rectitude of purpose. Those whom he opposed never could doubt the earnestness of his convictions and the probity of his intentions. Add to this his sturdy independence and plain out-spokenness; and we see how he became a model guardian of the interests of the people in the Council. Prominent in "Opposition" as he was, he possessed the esteem of his official colleagues, who could never possibly hope to cow him down to meek obedience or cringing acquiescence. An attempt of the kind was once made by a Governor, too well-known for his imperial impulsiveness, to require special mention; and in answer, he was politely requested to remember that he was no longer in the Central Provinces. With the Council constituted of an overwhelming official majority, as it was and still is, it was not possible for Mr. Mandlik to outvote the Government. But he failed not to do the next thing best he could do—he out-argued his official opponents. He would always have his

say; and with him arose the importance and sanctity of solemn protests, that are day by day becoming in India, a powerful constitutional method of securing redress of grievances and political advancement. The Government found in him a worthy opponent and a useful critic. He was three times re-elected to a seat in the Local Council, with which he thus remained connected from 1874 to 1884, except only in 1878 and 1879, when Sir Richard Temple was Governor. During this period, he was several times appointed to act as Government Pleader, and a technical difficulty arose in his accepting the appointment and retaining his seat in the Council too. It was always overcome by his resigning the seat of a nominated unofficial member and by being re-appointed to the Council as an official additional member. It falls to the lot of few to win such a unique position as Mr. Mandlik did—a position of respect by Government and of confidence by the people.

His nomination to the Supreme Council.

A wider sphere of legislative activity was opened to him in 1884, when Lord Ripon's Government nominated him to a membership of the Imperial Legislative Council at Calcutta. He was the first native of Western India to be so honoured; and there can be no doubt that he was so honoured because of his excellent services in the Council of his Presidency. Both the new departure and the first selection were hailed with satisfaction by entire Western India,—Natives and Europeans, alike. Bombay felt herself honoured in the honour that had been conferred on her eminent citizen. A grand entertainment was given to Mr. Mandlik, previous to his departure to Calcutta to take his seat in the Supreme Council. It was a representative assemblage, in its fullest sense, which did him this honour; and the sentiments then expressed by the President, Sir Jamshetji Jijibhai, found an echo in every heart there and outside too. Speaking on behalf of the gentlemen assembled, who represented "all the leading members of the communities of Bombay," the worthy Baronet thus addressed the guest of the evening:—

"It is a matter of high congratulation to us that the right of this Presidency to be represented in the Viceregal Legislative Council has been at length recognized by the Government of Lord Ripon, and we trust, that a precedent has been thus established, the justice and firmness

where-of will not fail to ensure its due repetition in future. Our gratification on this subject is greatly enhanced at finding that this recognition of the right of this Presidency has found its fulfilment in the selection of so worthy and qualified a repre entative as yourself. This is neither the time nor the occasion to enumerate the great and important public service s you have rendered for a long series of years, and which have rendered your name, one of the most popular as well as one of the most esteemed throughout the Presidency; nor could such a task, even if I were disposed to enter upon it, be disposed of briefly. I shall content myself on this occasion by giving expression to the general sentiment that the ability and zeal, the independence and rectitude, which have characterized your career hitherto, e minently qualify you to represent the varied interests of this Presidency in the high place to which you have been called. In your nomination, we recognize the sincere desire of Lord Ripon's Government to call to his Council real representatives of the people, men like yourself who could render useful service to the public cause. Your nomination is thus as honourable to those who have made it, as it is honourable to yourself and gratefully appreciated by all classes of the people. We understand that you leave for Calcutta to-morrow; and let me assure you, in the name of the gentlemen, gathered here to-night, that our best wishes will follow you in the new career of public usefulness which is thus opened to you."

Demonstrations of public approval.

There were demonstrations of approval from all quarters. One of them was from people, not often in evidence, and has a value of its own. During his journey to Calcutta, the *Jahagirdars* of Nasik greeted him at the Niphad Railway Station with a flattering address, read and handed over amid great *eclat*. Honoured in his own Presidency, he was cordially received at Calcutta, both by his colleagues in the Council and the general public out-side. The Indian Associa ion gave a welcome entertainment in his honour, which was attended by the *elite* of the Calcutta public. He fulfilled the expectations raised of him; and the public approved highly of his re election to the Council in 1886 by Lord Dufferin's Government. Ill health compelled him to resign his seat towards the end of 1887, but not before he had fully justified his selection and won laurels fresh and glories new. The value of his labours as Councillor will best be evidenced by his speeches given in this book. We will only direct the reader's special attention to those on the Land Revenue, the Mhowra, and the Local-Self-Government Bills in the Bombay Council, and to those on the Bengal

Tenancy and the Income Tax Bills in the Supreme Council. It was in the debate on the latter Bill, that he made his celebrated protest against the abolition of the Import Duties, whilst taxes like the Salt Tax remained and were enhanced, and whilst the expenditure was fast out-growing the income.

A life-time memorial.

After his resignation of his seat in the Supreme Council, his numerous friends and admirers thought it meet to formally recognize his services and erect a permanent memorial in his honour. On the 17th of December, a grand representative meeting was held for the purpose, at the Petit Hall, Sir Dinshaw M. Petit presiding. Among other things, the chairman said :—

"It is some times said that to do something by way of a testimonial in honour of a person, while he is yet engaged in public life, is rather premature. I, for my part, do not at all share that opinion and I am quite sure that none of you does so. The *Rao Sahib* has been actively taking part, during the last thirty years, in all measures of public interest, and it may be confidently asserted that he has achieved much during that period. He has all along possessed both the confidence of the people and the Government, and has discharged his duty by both in a remarkably able, effective, and independent manner. His services to this city, as well as to the country at large, have been valuable, and they deserve to be honoured."

In proposing the erection of a permanent memorial to Mr. Mandlik, the late Mr. Vurjiwandas Madhavadas said :—

"He has for many years been recognized as one of the wisest and most efficient of our leaders in the native community, whose assistance and advice have been sought for on all important occasions. In a truly disinterested and unselfish spirit, he has made the interests of the natives of this country his own. . . . His influence upon the deliberations of that body (the Municipality of Bombay) has always been most beneficial, at the sacrifice of time, health, and means."

A large fund was collected to carry out the object of the meeting. It was resolved to found, with it, a gold medal, bearing his name, to be annually awarded by the local University for the best essay on a subject connected with Sanskrit Literature to be chosen by the Syndicate, and to prepare a bust of his to be placed in some public building. The latter will, it is expected, be finished shortly. A similar meeting was held also at Poona and a prize founded in connection with the *Veda-shastrottejak Pathashala.*

Few are thus honoured in their life-time; and before such spontaneous demonstations of hearty approval from the public, almost fade into the back-ground the titles and honours, Government conferred upon him. But a life would not be complete unless one mentions them. A special Resolution of Government allowed him to retain the title of *Rao Sahib*, he had officially enjoyed as Deputy Educational Inspector. In 1874, Sir Philip Wodehouse's Government appointed him, as has been already mentioned, a member of the local Legislative Council. They then offered to him the lucrative appointment of the Sheriff of the city. The tempting offer was, however, courteously declined, as its acceptance would have necessitated the resignation of his seat in the Council. In 1875, he was appointed a member of the first Factory Commission. In the next year, Lord Lytton invited him to sit on the Text Books' Committee at Simla, but he declined the honour on account of ill health and public and professional engagements. In 1877, was held the grand Delhi *Durbar*, at which Her Majesty Queen Victoria was proclaimed Empress of India. Mr. Mandlik was specially invited to the *Durbar*; at which it was intended to confer upon him a *Rao Bahadurship*, which, however, he thankfully and courteously declined, as not likely to be a very valuable addition to his name. But he got the exalted title of Companion of the Star of India instead, not to mention a silver medal, commemorative of the occasion. The presentation of the insignia of the Order of the Star of India took place at a special *Durbar* held at the Secretariat for the purpose, in January 1878. The pleasing duty was appropriately entrusted to his former official superior, the Hon'ble Mr. Gibbs, who thus addressed him on the occasion:—

Honours by the Government.

"He had special pleasure in presenting to him the insignia of the exalted order of the Star of India, and he might say, he had very great pleasure in presiding on this occasion and presenting the jewel with his own hands to the *Rao Sahib*, whom he had known for a quarter of a century, since the time he was employed as a confidential clerk to Sir Bartle Frere in Sindh. He (Mr. Mandlik) had subsequently done excellent service to the Government in the Educational and Judicial Departments. It was a matter of sincere pleasure to the honourable gentleman to remember at this distance of time, that when he held the office of special Income Tax Commissioner of this great city, he had the assistance

of the *Rao Sahib*, as his confidential assistant, and that for the manner in which he conducted the important duties of his new position, he had deserved the highest praise, for which he (the president) then recommended him to the notice of Government. Since then, the *Rao Sahib* had resigned the Government service and had joined the Bar of the High Court, Appellate Side, at which he had raised himself to an honourable position, while at the same time he had distinguished himself by taking an active part in the public duties of the citizenship."

Mr. Mandlik as an author.

Eminent as the career, we have hitherto sketched, was, Mr. Mandlik's title to historic greatness will probably rest much more on his literary labours than on the comparatively passing life of an active un-official politician of the day. He was an ever-attached devotee of learning. His splendid library, in which will be found books of all sorts, which were there for use, and not for show, bears ample evidence of his insatiable thirst for knowledge and varied erudition. It is probably the largest private library in Bombay. He was not, however, a mere reader and scholar. He was an antiquarian and an author of true originality and research. *His first literary efforts were directed towards enriching the Vernaculars. Whilst yet at College, he adapted into Marathi "The Lottery", one of Miss Edgeworth's Moral Tales, for which he won the Sundarji Jiwaji prize.* His next work was a translation of Miss Marcett's Dialogues on Political Economy. The work was a joint one, the late Mr. Hari Raoji sharing in the labours. Next came two lectures in Marathi on 'Habits and study,' based on Todd's Student's Manual. Another lecture on the transitory condition of the Hindus quickly followed. While in Sindh, he learnt the language of the province and published a small grammar of the Sindhi dialect. Then he studied Gujerathi and translated into that language as well as into Marathi, Elphinstone's History of India. This book was a text book of the local University, so long as the Vernaculars had a place in its curriculum. After a couple of minor productions, appeared in 1867, the first work, which showed him to be a writer of original thought,—his manual of Hindu Law, which, with its Gujarathi translation, is still a standard text book on the subject. After a translation of Kinderseley's Law of Evidence and a guide to Acts and Regulations, appeared his pamphlet in English, on the Mysore Adoption Question, which was first published

in England and then in India, and which created almost a sensation in both the countries and materially contributed to the final settlement of that vexed question. Then came pamphlets in 1874 on the *Khoti* system, and on the Bombay Revenue Jurisdiction Bill, in which was involved the question of the separation of the Judicial from the Executive branch of Government service. He also read six original papers of important antiquarian research before the Bombay Branch of the Royal Asiatic Society. They will be found in this book. His next work was, at the suggestion of the Hon. Mr. Gibbs, a reprint with notes, in three volumes, of all the papers that had been read before the Bombay Literary Society, which afterwards developed into the Bombay Branch of the Royal Asiatic Society.

His memorable work on Hindu Law.

His greatest literary achievement saw light in 1880. In that year, was published his famous work on Hindu Law, containing a correct edition of Yajnyawalkya's Smriti and Nilakantha's *Vyawahara-mayukha*, the two standard authorities on the Hindu Civil Law of Western India, with their translation into English and an elaborate introduction, in which he discourses on the history, the sources, and the nature of the Hindu Law and gives an analysis of the Smritis and essays, discussing in a masterly manner, the texts, decisions and customs bearing on several topics of importance. The work was the out-come of an idea, long cherished and long laboured at. The work of settling the text and translating it correctly, was alone sufficient to make a reputation. But Mr. Mandlik's merit consisted not in this alone. The learning and research, the intimate acquaintance with Hindu usage and practice, the power of clear argument and forcible criticism, displayed therein, the merciless exposition of fallacies, hallowed only by long persistence in error under the name of precedent, of which the work gives evidence at almost every page, have secured for it a reputation with the Bar and the Bench, which will long keep green the memory of its illustrious author. It is a pity, the work is not a complete exposition of the Hindu Law. It does not deal systematically with the entire law, nor does it discuss all topics of importance. Mr. Mandlik fully intended to complete it in every way and was collecting the necessary materials, but ill health and early collapse prevented a consummation, which would have enriched

highly law and literature alike. In 1886, he published his voluminous edition of *Manu Smriti* with seven commentaries, none of which except that by Kulluka, had before been published. That was a work of great value, showing great industry and research. In fact, it was a special delight with Mr. Mandlik to hunt after old manuscripts and collate them. He would freely spend time and money on that. It was his intention to publish all the unpublished *Puranas*, the Hindu mythological chronicles, which he valued for the light they throw on Hindu Law and usage. The work, he had last on hand, was an edition of the *Padma-Purana*. The work of settling the text had been completed, but he died before it could be sent to the press. The proprietors of the *Anandasram* Press have since published the work, as prepared by Mr. Mandlik.

His connection with "The Native Opinion."

No notice of his literary efforts or public life would be complete without a mention of the English weekly (now an Anglo Marathi Bi-Weekly) called *Native Opinion*, which he started in 1864 and ably conducted till 1871. It was known as his paper; and he was well aware that it was so known. Hence it was, that with all the paternal interest and pride he felt in it, he severed his connection from it, when he found that he could not spare the time necessary to keep it subjectively as well as objectively a paper of his own, as it formerly was. Yet, to the last he had a living sympathy with it; and therein it was, that the public found his views expounded in full, whenever of course he chose to do so. The paper has now changed hands and developed into an Anglo-Marathi Bi-Weekly. But still it retains the Mandlik ring about it; and its prestige and influence is still derived from the fact of its having once been the *Rao Sahib* Mandlik's paper.

His views on and attitude towards social reform.

A bright product of Western education in the days of its buoyant youthfulness, as he was, it is almost an enigma as to how it was that Mr. Mandlik was almost as orthodox in social matters as he was one of the most advanced in political. And the wonder of it increases when we remember that in his youthful days, he was one of the ardent advocates of social reform in all directions. In justice to him, however, it must be said that his zeal

as social reformer lasted not very long; nor was it of such a pronounced and radical character, as should justify a charge of total change of front, or of sheer inconsistency. Even such changes take place in the practices and views of eminent men—of men like the late Lord Beaconsfield and Mr. Gladstone ;— and consistency has not yet been ranked as a virtue under all circumstances. Perhaps, Mr. Mandlik knew not his own mind well or that of the other pioneers of social reform, when in the beginning of his life he made common cause with them. But he soon found out that the conservative instinct was too strong in him and that he could not associate himself with the radicals who seemed to have no sympathy for the old, and who at once proceeded to make changes, for which the society was not prepared, and the utility and safety of which had not yet been fully demonstrated. The unfortunate but inevitable separation soon took place; and left to himself, his temper and spirit led him more and more into a genuine love for the old and time-honoured institutions of his country and into that frame of mind, which on account of its own purity could see but the bright side only,—the poetry, the spirit of resignation, and the true charity alone, on which even the present day usages and practices of the Hindus can be traced, below the accretions of the degeneracy of ages, to be based. Intellects like Mr. Mandlik's know not half ways, know not halting midway between two views. They must march and reach one goal or the other. So was it, that Mr. Mandlik finally became a champion of orthodoxy and the old. Gradually and gradually, he developed as sturdy and noble an orthodoxy, as even the opponents could not but respect and admire. People from a distance half suspected him to be a hypocrite; but those who, like the writer of the sketch, belong to the opposite camp but came in close contact with him, could never doubt of his perfect sincerity, of his perfect faith in the truth of what he believed, did,. and said he believed. The separation between him and the social reformer, once begun, became widened day by day. The excesses of the reformer of the day, the pitiable spectacle of his loud talk and cowardly shrinking from action, and above all, his failure to achieve any thing solid, completed Mr. Mandlik's alienation from him. That alienation naturally grew up into an active opposition, when the stranger Mr. Malabari, began

his crusade against Hindu marriage institutions and when the discomfited social reformer hailed, much as the drowning man hails even a piece of straw, the by-no-means dignified propaganda of social reform by State Legislation. His great name, his views being well-known, forced upon Mr. Mandlik the leadership of the anti-Malabarian party; and he was as powerful in the social struggle as he was in duels over political questions. His pen, his influence, his vigorous industry and zealous activity, no doubt, contributed to the abandonment by Government of the *role* of social reformer, which it was sought to thrust on it. The days of orthodoxy do certainly seem to be over; and a change can, it is to be hoped, be only a question of time. But the best ways of making that change are still to be found out. It will, therefore, be for the future historian to judge whether, on the whole, some good was not really done by the success of the efforts of Mr. Mandlik and others to check in the bud the programme of a systematic social revolution by means of direct State—intervention. The tendency of looking to the State for help was what Mr. Mandlik disliked most in the forward social reformers of the day. Otherwise, he was tolerant and indulgent to them. Many of them were his friends, and for many of them he had respect and esteem. Nor was he a blind and rigid follower of orthodoxy, as the ignorant understand it and the *pseudo*—patriots of the nineties represent it to be. He was a friend of female education to the last and the ladies of his household, enjoyed a freedom and respect, which is not to be found in many a talking social reformer's family. He was opposed to the disfigurement of widows and practically saved some from that terrible ordeal. He also strongly favoured with certain limitations the readmission into their caste of Hindus who had crossed the *kala-pani*. These things should not be omitted from consideration when a judgment is to be given on Mr. Mandlik's views and work in connection with social changes. His attitude as regards them may be deplored; but his sincerity should never be questioned, nor should it be forgotten that the attitude was the result of a deep patriotism, blind it may be, which could not brook the exposition to the world of the dark side of the institutions of his country, and much more, their desecration by the irreverential interference of unsympathetic foreigners.

His last illness.

And now we come to the closing scene of the drama,—the last days of the eminent man, whose career we have traced from his birth in a small village in the Konkan to his rise to the highest position a native can rise to,—the position of a learned man, a successful member of his profession, an author of great eminence, and a politician whom the people trusted and the Government called to its counsel and showed unmistakeable signs of respect and esteem for. It has been already mentioned that his system first received its fatal shock during the labours he undertook in connection with the *Khoti* appeals in 1887. He had an excellent constitution; and his regularity and purity of life would have secured to him a long life; but he worked too much and the worst of it was, that he could not be induced to give up work, even when his medical advisers strenuously advised him to take complete rest. A life of sloth and indolent enjoyment was worse to him than death; and he worked and worked till nature made it absolutely impossible for him to do aught but lie in bed helplessly. So he gradually became worse and worse. In 1888, Bright's disease made its appearance. Whilst at Poona, in the October of that year, he had a fit and high fever, which proved the beginning of the end. He came to Bombay and rallied a little, only to begin work again and have another strong fit in February next. One more fit he had on the 27th of March, and that was whilst he was sitting in the High Court, whence he was brought home unconscious. For two days he did not recover consciousness. He got a little better in April; but it became more evident every day that he could not live long. Neither the cool breezes of the Arabian Sea that blew on his sumptuous residence,—"the Hermitage" on the Cumbala Hill, nor the utmost care of physicians like Drs. Hogel, Deshmukh and Kher, nor the best tending loving relations ever administered, could sustain a constitution, which, strong as it was, had been completely broken by incessant work and mental activity. His heart became dilated and he suffered from dysp-nœa. Lingering for a few days more, he suddenly grew worse, got a high fever which rose to 108 degrees, and expired at 3 A. M. on the 9th of May 1889

Public grief and sympathy at his death.

Needless to say, his death caused a profound grief in Bombay and in the whole Presidency. It was considered by all to be a heavy public loss. We have already quoted the special Resolution, the Corporation passed, recording their sense of the deep loss, they had sustained by the death of one, who had long been a distinguished ornament of their body, and given extracts from the speeches of the proposer and the seconder of the Resolution. We have also quoted the eloquent and flattering terms, in which Dr. Machican as Vice-Chancellor of the University, referred to him at the next Convocation after his death. Mr. J. De C. Aitkins, acting Under-Secretary to the Government of Bombay, in a letter to the *Rao Sahib* Mandlik's son, said that "he was directed by his Excellency the Governor to convey to him a sincere expression of His Excellency's sympathy with the Mandlik family." The Mulji Jetha Cloth Market and a part of the grain market were closed for a day as a token of respect to the memory of the *Rao Sahib*. Expressions of grief were made in the Courts by the Bench and the Bar. Sir Charles Sargent, the Chief Justice, on the reopening of the High Court in June said:—

"I also wish to take this opportunity of alluding to the death of a very old and esteemed member of your body—I mean the late *Rao Sahib* Viswanath Narayen Mandlik. I may say that the diseased was a sort of link between the old and the new order of things, and was regarded by all with great esteem on account of his fine, independent character, and also of that learning, which he possessed on special subjects, which, I greatly fear, is gradually becoming more rare under the present system of education. We all regarded him with the greatest respect, and I have no doubt, gentlemen, that you were all proud of him. We shall long regret his absence from his familiar place."

At Ratnagiri, the chief place of his native country, the Konkan, the grief felt, of course, was more general and profound than it could naturally be anywhere else. It found expression in a crowded meeting held in the *Durbar* room of the High School building, at which Dr. J. Pollen, the Collector, presided. Remarking that the *Rao Sahib's* death was "a national loss, as witnessed by the lamentations of the whole empire," he thus proceeded :—

India mourned in Mr. Mandlik a real leader, a man of marked individuality of character, a man rich in saving commonsense, and as the

greatest only are, in his simplicity sublime. Ratnagiri, in particular, mourned for a son of whom she had every reason to be proud—one who had left behind him an example, which every youth in the district should endeavour to follow. Those who had known Mr. Mandlik well, declared that from his youth upwards, he had been distinguished by punctuality and methodical distribution of time and independence of character. Dr. Pollen had personal experience of these characteristics; he remembered that, while Acting as Under-Secretary to Government, he once called on Mr. Mandlik (and he supposed like all Under-Secretaries, he had a due sense of his own importance), but found that he had to wait. He was shown into Mr. Mandlik's well stocked library and after some 15 or 20 minutes, Mr. Mandlik appeared and briefly apologised for keeping him waiting, explaining that this was the hour he usually set apart for his lustrations and devotions, and that if an hour had been fixed for the interview, he would have been punctual.

* * * *

Mr. Mandlik's shrewd intelligence and business-like capacity became apparent in the first five minutes' conversation. He had inherited the birth-right of Ratnagiri, an Attic intellect, for Ratnagiri might be described as the "Attica of India," and the Ratnagiri Brahmin in clear-headedness and business capacity was second to no race in India. With regard to Mr. Mandlik's eloquence and fluent command of English, Dr. Pollen said that he had often heard Mr. Mandlik speak both at the Council table and in the Committee Room; and had aways been struck by his ready eloquence and clear and cogent reasoning. Mr. Mandlik used to be the adviser of Government in many matters, especially in affairs affecting Ratnagiri, notably the *khoti* settlement.

* * * *

In conclusion, the chairman noted Mr. Mandlik's singular good fortune, but this, he said, was nothing more than Mr. Mandlik deserved. He not only commanded success, but worked hard for it. He was an exceptional man in the high estimation in which he was held by those nearest to him. It has been said that a prophet is not without honour save in his own country and in his own house. But Mr. Mandlik was an exception to this rule. He was a prophet held in honour by those of his own household and the men of his own village, and no sounder proof of the high regard in which he was held by his own fellow-townsmen could be adduced than the gathering present in this room to-day to do reverence to his memory. (Applause.)

From various places in the *mofussil* came expressions of profound public grief and sympathy. The *Sarvajanik Sabha* of Poona "felt profound grief" at the "very heavy loss" the nation had sustained in the *Rao Sahib's* death. The press of the Presidency,

each and all, re-echoed these sentiments, as also the more cosmopolitan journals of all India. We give at the end of this sketch a few representative extracts from their obituary notices of the *Rao Sahib*. They will show that his strong individuality had made an abiding impression everywhere and on all, and that, in spite of his irreconcileably pronounced views on certain matters, men of all castes and creeds in India, were proud of him, and thought that in him, a great public man had departed from the country, whose place would long remain difficult to fill.

A remarkable incident at his death—throwing light on his character—and the principal traits thereof.

There was a remarkable incident in the closing moments of his life, which best showed the character, Mr. Mandlik possessed. He had been unconscious for more than twelve hours. The doctors in attendance and the majority of the members of his family had gone to a distant terrace, not suspecting that death was imminent. They were startled by a loud cry of "Ram, Ram." They hastened to the sick room; the doctors felt the pulse and found life was extinct. Mr. Mandlik had recovered consciousness just to cry out the name of his favourite God, as he had always devoutly hoped he would be able to do, and had then fallen into the eternal sleep which knows no wakening. This little incident throws a wonderful light on his real character. We find therein the key to it. His final "Ram, Ram,' were the result of a determined will, which conquered even the physical prostration of body and brains. It was this determined will, this earnestness of conviction, this resolution of doing what he once resolved to do, which was at the bottom of the ardent industry and untiring zeal and even the rigid punctuality, for which he was so well known, and through which, it was, that he became so illustrious. It was this which made him most European-like amongst natives and which secured for him the esteem and respect even of Europeans. Talents many have, and many talented men possess industry too. But few combine talents and industry with a unique force of character and an indomitable strength of will and determination, as Mr. Mandlik did. It was this combination, which explains the whole course of his life and the eminent success of that life. He knew his abilities and, having neither the vaunting over-confidence

that thrusts itself in season and out of season on public notice, nor the maudlin diffidence, which shrinks back like a coy maiden, he determined, early in life, to make the best use of his talents and attain the position which was their due. He had the strength to carry out this determination fully. His life is, therefore, a noble example to all who wish to do something more than make money, live, enjoy, and die.

Social and Domestic life.

Born for and constantly engaged in higher things, he had no time for the ordinary trivialities and amusements of life. Yet, he was not a man of only the sterner traits of character. He was a Puritan, without the Puritan's cant or exclusiveness. His sympathies were broad and his heart forgiving. Whenever he had leisure, he was pleasant and courteous. He had a true nobility of heart and his charities were many and extensive, though private and unostentatious. He possessed in a very high degree the softer virtues of love and kindliness. They were shown in the treatment he accorded to the hundred and one relations and dependents that constituted his family. He was a model master and a model *pater familias*,—a faithful husband, a loving father, and a liberal guardian. His wife was weak and sickly in her youth and a complete invalid in her later years. But his devotion to her never slackened; and not only were her comforts and conveniences studiously looked after and elaborately provided for, but her wishes were always respected and her requests cheerfully granted. It was at her desire that he gave away in charity, his and her weight in silver. The child he adopted was her selection, being her sister's son, left motherless, when only six months' old and thenceforward reared and brought up under her care. Left a widower by her premature death in 1879, Mr. Mandlik lived the life of a veritable hermit in his "Hermitage" on Cumbala Hill, with but one object of earthly ambition—the advancement of that child. He loved him with more than the tenderness of a natural father; and happily the love was reciprocal. It was for that child that, he would say, he lived and worked. Not that he cared not for others of his kith and kin. To all who were docile, his helping hand was ready to be extended, and his help was never niggardly. Him whom he accepted as his, he would do all to raise to the

highest position. At least half a dozen gentlemen, few of them of his own caste, who now occupy or did before their death occupy a very honourable position in society, owe their rise to his active sympathy and support. He had no sectarianism, no narrow-minded bigotry. He had no jealousy, he shrank not from any competition. He had too grand a character for such weaknesses. There was something royal in his private life and his family arrangements. Every one who had an eye to see and a head to mark, could not but be deeply impressed by it. It was this innate grandeur about him, which awed opponents and made them feel cowed down before him. Even those who differed from him, could not help feeling proud of him. The best of the Maratha character seemed to be concentrated in him. A Calcutta paper once told his Bengali countrymen to see in Mr. Mandlik, the type of the men who had built up the mighty Maratha empire. Therein, he showed a rare insight into the character of men; for, if Mr. Mandlik had anything special in him, it was that he had all those virtues and even the weaknesses, that had enabled the Brahmin statesmen of the Konkan and Poona to subjugate and out-shine for a time, every other race in India. He was a link between the past and the present. Under the softening and enervating influences of British rule, the Maratha character seems to be losing its more sturdy and manly traits; and it is feared that in the late *Rao Sahib* Vishvanath Narayen Mandlik, we have seen the last of a noble type of men, fast becoming completely extinct.

EXTRACTS FROM NEWS-PAPERS.

(*The Bombay Gazette.*)

The death of the Rao Saheb Vishvanath Narayan Mandlik deprives Bombay of an eminent citizen distinguished by his learning, by his high position at the Bar, and by long and exceptional services to the State in the Bombay Legislative Council, and in the Legislative Council of the Government of India. We can ill spare such a man. His fine intellect, sustained by wide erudition, found abundant occupation in professional duties and as an author of works of standard value on jurisprudence. As member first of the Local and afterwards of the Imperial Council, the Rao Saheb was able to make his energy and experience of great practical service to his fellow-citizens. He helped to build up on a broad and sound basis the free municipal institutions of Bombay. Though a Brahman and belonging by connection to the orthodox party, his capacious mind and generous sympathies enabled him to labour in a cordial spirit with all who, like himself, desired the public welfare. Of wide reading, he possessed the largest and most comprehensive private library in Bombay—a library filled with works full of the lore of the East, and of the more prosaic legal, Parliamentary, and philosophical literature of Europe. The books which were on his library shelves were there for use, not for show. His knowledge of Shakespeare, Milton, Spenser, and other great poets would have been remarkable even in Englishmen of exceptional culture; he could repeat from memory their finest passages, the beauty of which was a source of unfeigned pleasure to his active and responsive mind. Throughout his life he was a man of liberal views, and all his intellectual activity took a useful and, if the term may be used, a modern direction. He was fully and perhaps in later years unduly apprehensive that the cause of real progress might be hindered and discredited by those who took no thought of the forces of tradition and habit which had to be counted with. Standing aloof from agitation, which he regarded with suspicion, he was desirous of trusting to the slow growth of opinion as the most effectual means of effecting reforms which others

sought to force on the community before the public sentiment was prepared for the change. Regarding things generally from this point of view, he strongly disapproved of the efforts of a small minority of the late Corporation—of which body he had been twice elected chairman—to break up the municipal machinery, which had on the whole worked well, on the chance of substituting for it a sort of Waterbury watch arrangement which might work better. The Rao Saheb was a man of considerable mental power, strengthened and diversified by wide culture and supported by strong character which made him more willing to give than to accept the initiative in any movement. This trait of manliness gained him many staunch friends amongst the Europeans, who respected his independence even when they were not always able to resist the temptation to set it down to stubbornness and a determination to have his own way. Amongst all classes of the native community he was popular. Sprung from a wealthy Branman family, and priding himself in the position held by his ancestors in the Peishwa's service, he was in the best sense of the word a Hindu gentleman. He was also the architect of his own fortunes, which he owed entirely to his exceptional talents and great acquirements. The Government gave full and ungrudging recognition to his worth; he was for eight years member of the Bombay Legislative Council, and for four years he occupied a seat on the Viceroy's Council. For several years he fulfilled with credit to himself and to the entire satisfaction of the Government the responsible duties of Government Pleader. It is a small matter that he was created Companion of the Star of India and honoured with the title of Rao Bahadur. His claims to literary fame will rest upon his work on Hindu law and on the volumes which he has written and published in English and in the vernacular. The memory of such a man will long survive amongst us.

(The Times of India.)

By the death of the Rao Sahib Vishvanath Narayan Mandlik, C. S. I., the whole Hindu community of Bombay lose, as Dr. Blaney said, their intellectual leader, and it will be difficult, if not impossible, to find any one to take his place. He represented a class, always rare, that now seems to have disappeared. A Hindu of Hindus, he was still steeped in all the learning and culture of the West. He

owed his eminence to the impartial way in which native talent is encouraged and rewarded by the British Raj, yet he never forgot that he was descended on the female side from the family of the last Peshwa. He rose to be Government Pleader and head of the Native Bar, and had he been spared, he would probably have attained a seat in the High Court. In legal matters he had an unusually clear and subtle intellect, and yet he performed an act of piety that would have been more proper to his ancestors, by having himself weighed in silver, the Rs. 10,000, or thereabouts, that turned the scales going to the poor in charity. He spent half his scanty leisure in advocating political and educational reforms, and the other half in deprecating any attempts at social reform, which so many of his educated countrymen deem far more important. His fine library was full of the master-pieces in English literature, and these he studied closely, but he was at the same time known all over India as one of the very first Sanskrit scholars of the day. He was, as we said yesterday, a man of defined purpose, strong will, quick apprehension, vigorous intelligence, and wonderful versatility. He was perhaps the most distinguished of the first batch of talented Elphinstonians; he never forgot how much he owed to his *alma mater*, and almost to the day of his death he continued to take the liveliest and warmest interest in the progress and prosperity of the Bombay University. An acting professorship led him to a minor political appointment in Sindh, afterwards to a Deputy Educational Inspectorship, and then to the post of Personal Assistant to the late Mr. James Gibbs. He found time privately to read law, and at the age of thirty he passed the Pleader's Examination. Henceforward he devoted his business hours to the active prosecution of his profession, and ultimately succeeded Mr. Nanabhai Haridas as Government Pleader. He was always a leader in municipal matters whether as a member of the Bench of Justices or as a member of the Corporation or Town Council; and finally as Chairman of the Corporation. He was the first native Fellow of the Bombay University. For the unexampled period of eight years he was a member of the Bombay Legislative Council, and this led in its turn to his appointment and reappointment as a member of the Viceregal Council, where again he was the first native of Bombay to enjoy that honour. In both Councils he always took an

independent line, looking upon himself very properly as the representative of native interests. If he sometimes carried his principle to an extreme, he never lost the regard of his colleagues; and however much he differed from them, in the discussion of public affairs, he never carried his partisan feelings into his private personal relations with his opponents; and perhaps the most sincere tribute paid to his memory in the Corporation last Thursday was paid by Mr. Ollivant when he said they had often had considerable differences of opinion, and had taken different views; but he could say that amongst his native friends in Bombay he was quite sure he had no more sincere well-wisher than the late Rao Sahib. On Hindu Law he was at once an accurate and prolific writer and a recognized authority. His large edition of the "Institutes of Manu" in Sanskrit is well-known to all students, but his most important effort in Sanskrit literature, the work of his later years so as not completed at the time of his death. He wrote much in English, and at his own expense he printed in three volumes all that was of value in the transactions of the old Bombay Literary Society, and it was probably for these and other reasons that Sir Raymond West paid the Rao Saheb a very high but not unmerited compliment, when in honour of his name a Sanskrit Scholarship was founded last year in the University. "His services," said Sir Raymond, "have been constant and unremitting, and nothing can give us greater pleasure than to find that he is so highly appreciated and that his name is to remain for ever in the golden book of this Institution. He will be enshrined amongst the best and most deserving men of our institution, uniting within himself the attributes of a Sulpicious, a Varro, and a Macænas, and the fame of them all." But how did a busy lawyer manage to achive distinction in so many different ways? We will borrow our answer from Dr. Blaney. "From my personal knowledge" testifies Dr. Blaney, "I can say that he was employed from 4 o'clock every morning until he retired to bed at night." And according to the same authority, this incessant and unremitting labour hastened his death, and he succumbed at last to the influence of overwork." At all events he died in harness. The brilliant success of the Rao Sahib's career is from first to last a telling answer to those new fangled Indian *faineants* who profess to believe that natives of parts have no chance of rising under the

English regime; and we only hope that some well-qualified person will write the story of the Rao Sahib Mandlik's life from the days when he was a school boy at Ratnagiri to the time he was a member of the Viceroy's Council at Simla.

(*The Indu Prakash.*)

The mournful news of the death of this veteran leader of the Native community will be received with universal and profound grief throughout the length and the breadth of the country. Mr. Mandlik's eminent and distinguished career, the devotion with which he watched public interests, and above all, the sturdy independence of his character made him a most unique figure in public life; and in the estimation of all communities he occupied a position so high that it is the lot of very few indeed to attain that height. In him we lose one to whom it was given to long serve his country in varied capacities with remarkable ability, a man of high integrity, and an austere and fearless champion of whatever he considered to be right. The loss which his death causes will remain unrepaired for many a long day, for vainly may we look, at least in the community to which he belonged—the Maratha community, for one who will immediately take his place. Mr. Telang is a rising luminary, but it will be yet time before he attains the position of the Rao Sahib; and amongst those who are free from the trammels of Government service and are thus in a position to fight for the interests of the Natives in an open and fearless manner, Mr. Telang is now the only person that we need turn ourselves to. In the social controversy which raged so furiously during the last three years, Mr. Mandlik assumed an attitude which generated a kind of prejudice against him in certain quarters and many bitter things were at one time said which had best remained unsaid. To our mind, this prejudice always seemed unreasonable, for although the cause of reform would have gained largely if the Rao Saheb had taken a more liberal position, we had no right to expect that from him and had thus no right to complain, as he had all along his life shown himself to be essentially the leader of *enlightened conservatism* in social matters. It is true that at one time he was far in advance of his contemporaries even in social matters—and that was more than thirty years ago. To his immense enthusiasm for female education at that time, we referred only in

our last issue. But it would not be correct on that account to say that in latter years he receded from the position of his earlier years. The truth of the matter seems to us to be that although Rao Sahib's enlightenment enabled him to appreciate the blessings of female education, and thus led to his enthusiastic advocacy of that cause, he distrusted the larger reforms which in the course of time educated men of far more advanced views came to advocate. Once convinced of the benefits and the necessity of female education Mr. Mandlik began to labour for it with his usual fearlessness and zeal, and that he did when there was a mountain of prejudice against it, and when the number of the champions of the cause was exceedingly small. He thus came to be regarded at that time as a Radical in social matters. Gradually, however, with the wider diffusion of education, other people came up to his point. Some went even beyond him and advocated reforms from which he shrank. While times and other men thus progressed, the Rao Sahib remained where he was, and this accounts for his alleged radicalism at one period and his alleged conservatism at a latter one. In this respect he largely resembled the late John Bright who with all the reforms that he advocated in his life had a latent spirit of conservatism in his heart. Patriotism, unless it is exceptionally broad, has a tendency to narrow into conservatism, and Rao Saheb's patriotism, great as it was, was not exceptionally broad. . . . . If, however, his services to the cause of social reform were not the most valuable, his labours in the fields of politics and education, of local self-Government and literature stand out with very marked prominence and constitute a title to our warm and lasting gratitude. Whether in the University or the Corporation, the local Legislative Council or the Supreme Legislative Council, the Rao Sahib showed a surprising amount of industry and zeal coupled with a manly fearlessness which often over-awed his colleagues. Such a man is now gone from amongst us. The magnitude of our loss is indeed enormous, and it is truly and in every sense, a calamity to the whole nation.

(The Subodha Patrika).

The death of Rao Saheb Vishvanath Narayan Mandlik who though ailing expired unexpectedly on Thursday, is without

doubt a great public loss to the Native community especially the Hindu portion of it. For nearly thirty years, the late Rao Saheb was before the public gaze working in several different capacities of great public usefulness to the city, the Presidency and the country at large and there is hardly an intelligent person among us who neither knew nor heard of him while he was alive. Such a long public career as his naturally brought him face to face with many questions of public and social importance and into contact with large numbers of people with whom he worked or who witnessed his conduct and it was hardly possible that he should have always met with favourable criticism all round ; and thus one section of the people found fault with one thing and another with another. Yet throughout his public career the character of the man stood out prominent before all, and friend and foe alike recognized the sterling traits which went to form that character. In latter years however he would seem in all matters of social and religious reform to have receded from the advanced position he occupied while yet the influences of his college education were fresh upon him and even for a long time after. To our humble view, his later attitude on questions of social reform has borne the appearance of a halting, weak-need policy which was so much opposed to his general nature and under the influence of which he was led to over-estimate the value of ancient tradition and to ignore the baneful effect of absurd prejudice and injurious customs. But for all that, we have ever found a great deal to admire in the late Rao Saheb, and there is much for which all his countrymen have good reason to be proud of. One trait of character which pre-eminently distinguished Mr. Mandlik from the majority of his countrymen and which enabled him to get through a great deal of work was great perseverance, singular punctuality and regularity of habits. This as a virtue is rather conspicuous by its absence than otherwise among the native community in general including even the educated portion of it. But Mr. Mandlik acquired it early in life and rigidly practised it which enabled him to achieve so much work. This punctuality however was not always duly appreciated. Possibly at times it erred a little in point of strictness. But Mr. Mandlik believed in it all the same. While at College he came across Todd's Students' Manual, a book largely read by students. He was so impressed with it that not only did he imbibe its lessons and prac-

tised them in life but he also translated a portion of it into the Vernacular. Such instances of resolute self improvement as this are so rare among us that they deserve to be specially noted whenever one comes across them. Another excellent quality which equally singled out Mr. Mandlik from the majority of natives was his singular independence and his bold and even brusque way of giving expression to his views however unpalatable they might be to his hearers. This quality in him was especially noted by his European friends who so warmly appreciated and respected it. For Mr. Mandlik never betrayed in his intercourse with European gentlemen any the slightest trace of that timidity and weakness which Sir R. West in his minute on the Crawford case attributes to the class of native officials and which in his opinion is negatively responsible for the extensive growth of that scandal. Taken all in all, the late Rao Saheb was a conspicuous personage and a prominent member of the Hindu community whose death is a great public loss and he has left behind him a great example of resolute will, bold independence, regular habits and masterful vigour. In the wider humanity which education rears up to every one who comes under its influence imitation need not pall for want of good exemplars. But for all that, to his countrymen who saw him in the flesh, felt his influence, or profited by his labours, and to many generations of others who will follow them, Mr. Mandlik's example will naturally appeal with a strength that no foreign example can ever do. And so we wish it should do. May his soul rest in peace!

(*The Maratha.*)

The news of the death of Rao Saheb Vishvanath Narayan Mandlik, C. S. I., will give a rude shock to the whole of the Native community. A great man has gone and we do not know when we may look upon his like again. The void created by the Rao Saheb's death is so great that look at it from whatever stand-point we like it only reveals to us the magnitude of the loss we have sustained. . . . . The local work that he did would alone have secured for any one a claim on the memory and respect of his countrymen. But the sphere of the Rao Saheb's activities and sympathies was far more wide and extensive and so his loss is simply irreparable. The Rao Saheb had again the rare honour of being

held in esteem by different communities that commerce brings together in Bombay; Dekkanis, Gujerathis, Mahomedans, Parsees and even Europeans had all the same confidence in the energy, integrity, and independence of the learned Brahmin. Not that there were no differences of opinion—differences which, of late, had unfortunately become more pronounced, but some how all, even those that differed from him, freely acknowledged and had the firmest reliance upon, the strenght and rectitude of the man. The city of Bombay with its heterogenous population will therefore long miss the presence of the majestic Brahmin . . . . . The secret of his popularity and success lay deeper. It was in his character. In these days when the individuality of a Dekkani Brahmin is being crushed by the dead level of subordination, when he is spoken of as timid, nervous, ambitious yet enterprising, and ready to take colour from higher quarters, it was really a source of pleasure and pride to turn to a man who combined in himself " the attributes of a Sulpicius, a Varro, and a Macænas, and the fame of them all." Unfettered by the bonds of subordination he rose prominent above its dead level by the force of his character and strong individuality. Proud of his aristocratic connections, Hindu to the core, and endowed with a fine sense of self-respect and born to command and not to obey—he was, as a Calcutta contemporary once remarked, a worthy representative of the race that well nigh wrested the supreme power out of the hands of Mogul and that would have ruled supreme in India had not a superior power intervened. It is such individuals that give life and character to a nation and make its history. We do not mean that the Rao Saheb had no faults. No human being is faultless. But they were rather the faults of strength, faults which a mere intellectual vision discovers in a strong character, faults which one would rather prefer to the weak, vacillating and compromising character that is becoming fixed upon us under the present educational and political circumstances of the country.

(*The Reis and Rayyat*)

On the other side of the country—in the Western Presidency—Death has reaped in a single victim a very considerable harvest. The Grand Old Man has fallen. For the late Rao Saheb Vishvanath Narayan Mandlik was unquestionably the oldest and most distin-

guished of all our public men, on this side or that. There may be one or two senior in age, but they are comparatively obscure, or have not reached quite his stature. Narayan Mandlik was no Pandit confined with his *pothis* in a corner, nor shy politician nursing his public spirit in secret, nor publicist condemned all life long to air his eloquence and political information and wisdom through anonymous journalism, or on the non-official platform but a recognised public man. He was a representative and leader of the people, known and accepted as such. He was not only sure of a hearing, but was even invited to say his say. As much as a man of the soil could lawfully aspire in a British dependency, he had aspired and had succeeded. He had attained to as near a statesman's status as is open to a pure Indian. He was not to be suppressed or passed over. He was not the man to keep himself, or to be kept in obscurity. He had no unmanly hesitation or maudlin modesty. He knew what he was, and *would* be himself. Having a good opinion of himself, he expected others to share it. Believing in his claims, he took every opportunity to advocate them. He was, however, no vulgar braggart, pressing himself forward in season and out of season, but a Brahman gentleman and man of the world, disciplined in the school of an alien service. In fact, without a fine judgment and a native tact, he could not have risen so steadily as he did. The British constitutionally dislike and distrust intrusion, and in India their national character, from undue indulgence among a subject population, is apt to develop into extreme hauteur and touchiness. Any undue aggression might have sealed the Brahman's chances for ever . . . .

He was not only venerable in age, but imposing in presence, fair and attractive in person, and august in personality—in fine, the Grand Old Man. He was a king among men. Successful according to his countrymen's political status, he was the one native of Bombay best known throughout the Empire, perhaps our chief politician after the death of the late Kristo Das Pal. In some important respects, he was the Bengali's superior. He was a politician without a stain—*sans peur et sans reproche*. He raised the profession of politics, if it can be called one. He was, however, no common demagogue or agitator, but a patriot all the same—a grave thinker on public affairs, speaking and writing with a responsibility and the weight of

a well-earned position. A scholar and mathematician, a profound Hindu jurist and lawyer in general, thoroughly acquainted with the country, enriched with experience in various offices in different districts and provinces, he raised the tone of public discussion. Such a man is rare in any country, and rarer still in this, where we suffer from dearth of genuine talent and especially of adequate information. . . . . His career, like that of Kristo Das Pal, is a mournful commentary on British Rule. He was one of our best men—one of the ablest and noblest subjects of Her Majesty's worldwide Empire. And he succeeded, as much as he was permitted, For he was respected of both the nation and the Government. Yet, what did his success amount to? He closed his blameless life and brilliant career as Government Pleader of Bombay—a minor provincial law officer. Under a Bajee Rao III, he would in all likelihood have been Premier. Under any other European Power in the East, he might have been in the Ministry if not in the Cabinet.

(*The Hindu Patriot.*)

Telegrams announce the death, on Thursday last, of the Hon'ble Vishvanath Narayan Mandalik of Bombay. In him Bombay has lost one of her ablest sons and the Hindu community an advocate of the highest character. By birth a Marhatta Brahmin of high rank and a descendant of a provincial Governor, as his surname fully testifies, Mr. Mandlik was highly respected for his caste and position in society. He enhanced his claim to the consideration of his countrymen by intellectual and social qualities of a superior character. In fact in Bombay he was the representative of the highly chivalrous Mahratta race, and he sustained this character by unflinching advocacy of the cause of his countrymen. He had none of the failings of the rising generation. He professed not to be a "reformer." He proclaimed not to be a "patriot." He had no sympathy whatever for the social reformers that surrounded him. He did not convert religion into a means for personal advancement. He cherished a strong feeling of detestation for men who traded in religion and morality. He hated humbugs in every shape. At the same time he was one of the truest patriots and reformers of his time. In a word he was true to himself and to his Maker, and that included the whole circle of his qualifications. . . . . He had acquired

great proficiency too in the mysteries of Hindu Law, and his English translation of the *Mayukha* attests the depth of his learning in that branch of law. Had he done nothing more, that would have sufficed to sustain his character as an accomplished scholar.

(*The Amrita Bazar Patrika.*)

In Vishwanath Narayan Mandlik, who departed this life on Thursday last, we have lost a personal friend, a patriot, a savant, and a statesman. Perhaps the greatest of modern Hindus has fallen. He reminded us of the class of Bramhins who are getting extinct in India, the old rishis with their vigorous, cultured intellect which was never dismayed by the most abstruse of problems. Here is a national man lost, a man who was really national. He was a genuine and typical Hindu, whom we could have sent anywhere in the world to shew what the race is capable of producing. His *Manu* is a work, which will commemorate his name for ever. It is a gigantic work worthy of the great author. He resembled Babu Bhoodev Mookerjee, in many respects, even in appearance. We have spent many pleasant hours together in conversation about the regeneration of our country. Where shall we find another like him?

TABLE OF CONTENTS.

WRITINGS.

[*Political.*]

		PAGE.
1	Adoption *vs.* Annexation, with reference to the Mysore Question.	1
2	*Law* vs. *Discretion*, or remarks on the Revenue Jurisdiction Bill of 1873.	29
3	A Brief History of the Vatandar Khotes of the Ratnagiri District, with observations for a compromise of the disputes.	65
4	A Letter to the *Times of India* on the Khoti Bill of 1879	107
5	A Letter to the Bombay Government on the same ...	112
6	A Memorandum on the Deccan Famine, of 1876 ...	121
7	A Letter to Government on the Testamentary Powers of Hindus and Budhists	125
8	A rough draft of a Bill for the relief of agriculturists	131
9	Education in India (Memorandum submitted to the Education Commission)	139
10	A paper on Lord Ripon's Scheme of Local Self-Government	160
11	A Letter to Government on State interference in the matters of Social Reform amongst the Hindus ...	169
12	Employment of Natives in the higher ranks of the public service. (A memorandum submitted to the Public Service Commission)	183
13	Memorandum on the proposal for the abolition of imprisonment in execution of decrees for restitution of conjugal rights	191

[*Antiquarian papers.*]

1	Gomurkot and its Soda princes	197
2	Preliminary observations on a document giving an account of the establishment of a new village named Muruda, in Southern Konkan	201

3	Serpent worship in West rn India	235
4	The shrine of the river Krishna at the village of Mahabaleshwar	268
5	Shrine of Mahabaleshwar	281
6	Salivahana and the Salivahana Saptasa·i	286
7	Sangameshwara Mahatmya and Linga worship ...	300
8	Three Walabhi Copper-plates, with remarks ...	313
9	Notes on inscriptions in Kachha	333

SPEECHES &c.

[On Municipal affairs].

1	Address to Sir Bartle Frere	337
2	The Municipal Reform of 1871	338
3	The Police charges	344
4	Opening of the Tulsi water works	346
5	The Contagious Diseases Act	350
6	„ „ „	364
7	„ „ „	370
8	Lecture on the Drainage of Bombay	382
9	„ „ „	394
10	The Crematorium question	426
11	A Letter on Artisian wells in Bombay	430

[Speeches and minutes in the Local Legislative Council]

1	The Hereditary Officer's Bill	433
2	The Revenue Officers and Land Revenue Code Bill ...	436
3	Preliminary minute on the same	439
4	The Road Tolls Bill	441
5	The Mamledars' Courts Bill	443
6	The Road Tolls Bill	444
7	Minute of dissent on the Cities Survey Bill ...	448
8	The Ferries Act amendment Bill	449
9	The City of Bombay Land Revenue Bill	451
10	The Mamledars' Courts Bill	452
11	„ „ „	453
12	„ „ „	455
13	The Ferries Bill	457
14	The Cities Survey Bill	458

15	The Compulsory Vaccination Bill	459
16	„ „ „	460
17	The Cotton Frauds Bill	461
18	The Land Revenue Bill	465
19	Minute of dissent on the Land Revenue Bill ...	514
20	Further speeches on the same...	518
21	The Presidency Abkari Bill...	572
22	The Bombay Municipal Act Amendment Bill ...	567
23	The Game Preservation Bill	569
24	The Cotton Frauds Bill	572
25	„ „ „	574
26	The Sindh Village Officers Bill	576
27	The Presidency Police Act Amendment Bill ...	577
28	The Mhowra Bill...	578
29	„ „ „	580
30	The Provincial Roads Bill	589
31	The Pharmacy Bill	590
32	Minute of dissent on the Provincial Roads Bill ...	592
33	Minute in the Pharmacy Bill...	594
34	The Local Self-Government Bills	596
35	The Local Boards Bill (1)	617
36	The District Municipal Bill (2)	623

[*The Viceregal Legislative Council.*]

1	The Births, Deaths and Marriages Registration Bill ...	626
2	The Bengal Tenancy Bill	627
3	A Memorandum on the Khoja Succession Bill ...	647
4	Another „ „ „ „ ...	648
5	The Income Tax Bill	649
6	... ...	665
7	Minute on the Guardian and Wards Bill	670
8	Speech on the same	671
9	The Bengal, North-Western Provinces, and Assam Civil Courts Bill	672
10	A Memorandum in regard to certain improvements suggested by the Hon'ble Mr. Justice Mahmood in the transaction of business in the Allahabad High Court ...	672

[*Select Miscellaneous Speeches.*]

1	Mr. Justice Forbes	674
2	Sir Bartle Frere	675
3	The materials for a history of the Marathas ...	676
4	Ratnamàlà	678
5	Hemadri	679
6	Mukundaraj	679
7	Mr. Justice Newton	679
8	The Indian Institute at Oxford	681
9	The Bombay Revenue Jurisdiction Bill	682
0	Industrial progress in India	689
1	The 2nd Sir Jamsetji Jijeebhoy	690
2	The Hon. Mr. Gibbs	691
3	Relief of sufferers in the Afghan War	692
14	The Ilbert Bill	693
15	Sir Evelyn Baring.	696
16	Lord Ripon.	698
17	Age-limit for admission to the Civil Service. ...	699
18	The Hon. Babu Kristo Dass Pal	701
19	Prof. Fawcett.	703
20	Count a De Gubernates of Italy	705
21	The opening of the New Elphinstone College Buildings.	706

APPENDICES.

A To the pamphlet in the Bombay Revenue Jurisdiction Bill.

B To the History of Vatandar Khotes.

ADOPTION *vs.* ANNEXATION,

WITH REMARKS ON THE

MYSORE QUESTION.

[Dedicated with permission to "Sir George Russel Clerke, K. C. B., K. C. S. I., Member of the Council of India, twice Governor of Bombay, and known throughout India as the upholder of the just rights of her people."]

INTRODUCTION.

I PROPOSE in the following pages to reply to the observations of Sir Charles Jackson* and the Duke of Argyll† on the question of annexation, as being determined by what is technically called the law of lapse. That a native of India, should enter the lists of political discussion against an ex-judge of the highest Court in India, and against an English Cabinet Minister and possible Governor-General of this country, may at first sight appear strange, if not presumptuous; but it must be remembered that natives of India are at the same time subjects of the Queen of Great Britain; of that Queen who in 1858 pledged her royal word to "respect the rights, dignity and honour of Native Princes as our own," and to "hold ourselves to the natives of our Indian territories by the same obligations of duty which bind us to all our other subjects; and those obligations, by the blessing of Almighty God, we shall faithfully and conscientiously fulfil." Now it will surely be allowed to be the bounden duty of her Majesty's Indian subjects to appreciate this gracious promise, to try to remove all causes of misunderstanding between the governors and the governed, and to assist the good government of this Empire to

* *A Vindication of the Marquis of Dalhousie's Indian administration*, by Sir Charles Jackson, (Smith and Elder,) 1865.

† *India under Dalhousie and Canning*, by the Duke of Argyll, (Longman and Co.,) 1865.

the best of their power and intelligence. The distance between the British people and the natives of India is still unfortunately very great. The interest shown in our affairs by the British Parliament is often wayward and spasmodic. At one time we have measures enacted for us that would do honour to any age or country; at another we are subjected to treatment incompatible with the rights of free men These sudden changes indicate that the views and feelings of the natives of India are not properly made known to British statesmen in England, and hence fail to be appreciated. The natural consequence is a dangerously fitful government of this vast dependency by men who have not sufficient data to go upon, and whose success, or otherwise, must, therefore, be the result of chance. As in the department of natural science we collect particular facts to enable ourselves to form general conclusions, so in history and politics likewise, we are led to the discovery of new measures by noting down the results of old ones. The disturbances which commenced in India in 1857, called "Mutinies" by some, and "Rebellion" by others are a warning to all the friends of progress, English or Indian. There is no doubt a good deal in a name, but we must not be led away by words. As a geologist treats the stratified and unstratified rocks in their order of succession and gradual formation, so has the historian of the world to evolve the account of the different eras fram the facts at his disposal. It is the misfortune of India that in all discussions connected with it, it is necessary to begin with first principles. These so often escape the memory of Indian statesmen, and at such convenient times, that there is no evading the tediousness of always recounting them in detail. Like causes must produce like effects and yet it seems to be taken for granted by a certain section of English politicians, that this rule does not hold good in India. There is no doubt that the extreme pliancy of the Indian mind, and the immense depths of Indian forbearance and submission, produce appearances which deceive a casual looker on into the belief that the placid exterior is the true index to the entire views, feelings, and wishes of the community. Those who are content to look at the surface, of course see no further; yet they may be led by this superficiality to build upon a mine.

An Englishman regards his house as his castle. An English annexationist is, we suppose, no exception. When he preaches the

leve'ling policy of annexation, and dilates on popular rights, the good of the people, and such plausible stuff, he, of course, imagines himself to be taking high ground. But, we ask, does he do to others as he wishes others should do to him? It is one thing to introduce reforms at the expense of others and quite another thing to do so at the sacrifice of self. Do the annexationists regard other people's rights as they do their own? Do they suppose that the constitution of man is so changed in India, that the very things which an Englishman hates and despises, an Indian covets and admires? Is the instinct of selfpreservation absent from a Hindu's breast? If a few unmeaning symbols be clung to in England as sacred heirlooms and transmitted to posterity from century to century, as the pride of families, do they suppose that Hindus so essentially differ that they have no veneration for family relics, ancestral descent, ancient honours, and, still more, for Kingdoms, Principalities, castles, villages, lands, and offices enjoyed through countless revolutions, in a land where everything else has changed?

The Thomasonian school in Bengal, as well as the Goldsmid-Hart school in Bombay, proceed upon the same benevolent intentions of "improving" landlords "off the face of the earth;"* and the hereditary interests connected with the land or with the Government have had a tendency to become more and more widely alienated from the ruling power. Were the Royal Commission which Mr. Robert Knight asked for in 1859 granted, and evidence of competent witnesses examined on the spot, or, still better, in England itself—if the natives of India could be persuaded to go there—the revelations as to the results of the annexation policy in its various departments would, we are sure, be perfectly startling.

One of the greatest misfortunes of the Indian Government is the secrecy with which it works, and the consequent ignorance of both the governors and the governed. The Political and Secret Departments must, as things are at present constituted, be kept distinct, and, to a certain extent, protected from the rude gaze of the public. To a certain extent, I say, for I hold that a Government of India and

* *Vide* Article I., entitled "Oude," in the Bombay *Quarterly Review*. No. XIV. (September, 1854), ascribed to the able pen of the late Mr. Justice Kinloch Forbes. See *Times of India*, September 4th, 1865.

England combined *ought* to be so strong in its moral, as well as in its physical force, that it ought to be able to live in the light of day altogether. Secrecy is a mere matter of expediency, and is not, we trust, to be regarded as the *ne plus ultra* of policy, beyond which statesmen are not to look in governing the destinies of this mighty Empire. Englishmen laugh at the Pope's asserting the infallibility of the Vatican. Are they not constituting themselves up as so many Avatars of the Pope, when they, as a nation, will not acknowledge their political mistakes, and frankly offer restitution? Words are one thing and acts another. When a cause is proved to be in the right, the British Parliament must show practically that it will right the wronged. Were this publicly done, the moral effect of one such truthful act would be equivalent to thousands of bayonets. Truth is always truth, on the banks of the Ganges, as well as on those of the Thames—as well in the Tuileries as at the White House of Washington. It is, therefore, a mistake for British statesmen to suppose that the natives of India are so far different in organization as to be incapable of appreciating and being influenced by truth, social and political, moral and religious.

The kindness of nature brings about a state of coma, in which the bleeding of a wounded man ceases for a time, and opportunity is given to tie up the wounds, lest they re-open and the patient die. In an ordinary patient this alternation of bleeding and fainting goes on until the wounds are effectually tied up or the man dies. Such, we say, has been the state of wounded India; now bleeding and anon insensible. We are thus at present in a state of moral coma; and it is now for skilful surgeons to apply the bandages and stop the bleeding, and consequent exhaustion of the country. Physical profligacy is, as we are all aware, sooner or later visited with its sad consequences. Do the annexationists suppose that moral profligacy will, in the long run, not meet with punishment? Nature is constant to her laws. Truth is truth, in all matters alike, whether moral or political, and can have but one result, for error is manifold, but truth is only one. Anything that induces the British nation to swerve for one moment from the path of truth, should at all risks be discarded. It is with a view to show a lapse from truth, in treating of the questions discussed in the following pages, that this pamphlet

has been written and presented to all who take an interest in the welfare of India.

After these pages were written, the papes relating to Mysore, moved for by Sir Henry Rawlinson, were published. I rejoice to see such a powerful minority of the Indian Council making a stand for political truth, in opposition to the great current of annexationism. Sir G. Clerk, Sir F. Currie, Sir H. Montgomery, Sir John Willoughby (with whom I differ in some things), and Captain Eastwick have, by their fearless Minutes, proved their title to a place in British Indian history, as the friends of truth and justice.

Bombay, June 20th, 1866.

PREFACE TO THE SECOND EDITION.

THE first publication of this pamphlet was received by the general public with favourable attention, and the writer has reason to believe that the views he has herein advocated have not proved unacceptable to men, whom circumstances may not improbably lead hereafter in a position to put them to a practical test.

It would be uncandid to deny that the author has derived much satisfaction from the reception his humble efforts have met with, but he is free to confess, that his satisfaction arises, not so much from any personal consideration, as from the fact that the circumstance enables him to point a lesson of peculiar significance for the edification of his countrymen. That lesson is, that a case, fairly and temperately stated and laid before the English public, does not fail of securing the result which its equity may deserve. The English people, with all reverence be it said, are slow of apprehension;—but once their attention roused to the merits of a cause, it could not be commended to sounder or more impartial judges. Ardent patriotism may chafe at the slow action of the Government in a matter which to the interested may appear right and desirable. But, it should be recollected that the English is a constitutional government—and that, deliberation is of the very essence of such government.—And if the author could venture to take the liberty of making a suggestion to the Native Political Associations throughout the country, it would be to the effect, that their true aim lies in their efforts to collect and diffuse information which may serve to guide the deliberation of Government to rightful issues, in matters involving the best interests of the state.

1868.

ADOPTION *v.* ANNEXATION

CHAPTER I.

THE LAW.

BEFORE proceeding to consider the question of lapse, I propose to state briefly the theory and practice of adoption according to Hindu law. This will enable the reader to judge, whether the sanction of the British Government to an adoption is required, either according to Hindu law or equity and good conscience.

Adoption is the affiliation of a son to perform the adopter's exequial rights, and to inherit his property. Such a son is accounted in Hindu law to be the equal of one born from a man's body. In former times twelve kinds of sons were recognized by Hindu law;* of these, only two are now allowed, namely, the *Aurasa,* † or the son born to a man, and the *Dattaka,* ‡ or the son given.

The ceremony of adoption consists of two parts, the essential and the non-essential. An adoption is invalidated by non-observance of the former, but not of the latter. The essential parts of the ceremony are the giving and receiving of the boy and, according to some authorities, the performance of a *Homam,* or sacrifice to the sacred

---

1 *Vyavahara Mayukha,* Chapter IV., Section 1V., 41; *Mitakshara* Chapter I Section XI.; *Smritichandrika,* Section V., 3, 4; *Manu,* Chapter IX., 158-180.

† *Aurasa*: [From *uras,* the breast] issue of the breast.

‡ *Vyavahara Mayukha,* Chapter IV., Section IV., 46; ELPHINSTONE's *India,* p. 85, 3rd edition; 1, STRANGE's *Hindu Law* p. 75, 3rd edition, and the authorities therein cited; SIR W. JONES's *General Note to Manu,* Vol. p, VII. p. 155. of JONES's works by TEIGNMOUTH; ELBERLING on *Inheritance,* p. 69; MACNAUGHTEN's *Principles of Hindu Law,* pp. 17 and 18, 3rd edition.

fire.* Where *woman* or *Sudra* is the adopter, the sacrifice is performed on her or his behalf by the officiating priest.† This is all that is obligatory on the parties; the remaining ceremonies are optional. They are, 1, the assembling of relatives and friends; 2, the giving intimation to the Rajah; 3, the giving of a *madhuparka* (*i. e.*, prepared food, consisting of honey, liquid butter, and curds) to the Rajah and to the Brahmanas; 4, feasts to relatives, friends and Brahmanas, &c. It will be observed that the only place where the Rajah is mentioned is in the second optional ceremony. This has now been tortured into that of obtaining the *consent* of the Rajah, and made the foundation of the practice and theory of the law of lapse. I shall now proceed to inquire what this ceremony means, and whether there is any reason to suppose that the Rajah's consent was ever necessary in *any* case.

Manu is the oldest writer on Hindu law of which adoption forms a part. It is stated in the Veda itself that "whatever Manu pronounced is a medicine [for the soul]."‡ Let us now see what Manu prescribes on the subject; Manu, Chapter IX., p. 168:—

"माता पिता वा दद्यातां यमद्भिः पुत्रमापदि ॥
सदृशं प्रीतिसंयुक्तं स ज्ञेयो दत्रिमः सुतः ॥"

Translation (Sir Wm. Jones's Works, Vol. VIII., p. 28):—"He whom his father or mother, *with her husband's assent*, gives to another as his son, provided the donee have no issue, if the boy be of the same Gotra, and affectionately disposed, is considered as a son given; *the gift being confirmed by pouring water.*"

The italicised portion is from Kullukabhatta's comments.

---

* T. L. STRANGE'S *Manual of Hindu Law*, Para. 506; T. STRANGE'S *Hindu Law*, 93—97; *Principles of Hindu Law*, p 65; 1 MORLEY'S *Digest*, p. 19 & 20, paras. 68, 69, 70, 72, 76, 77; STEELE'S *Summary of Hindu Castes and Customs*, pp. 52 & 53.

† *Vyavahara*, Chapter IV., section V., *12. 13, 15*; STEELE, p, 52.

‡ "यद्वैकिञ्चनमनुरवदत्तद्भेषजम्". See also BABU PROSNO COOMAR TAGORE'S Preface to the *Vivada Chintamani*, p. LXXXXIV.

Madana, another authority, thus comments on the above text:—

"वा शब्दात्मात्रभावे पितैव दद्यात् ॥'

पित्रभावे मातैव; उभयसत्त्वेतूभावपीति ॥'

Translation:*—"The disjunctive 'or' means that if the mother be not present, the father alone may give him away: and if the father be dead, the mother the same; but if both be alive, then even both."

This is the most ancient authority extant, and except the *Homa*, which follows the gift and the acceptance, there is no obligatory ceremony laid down in the law books.

Saunaka, whose directions are observed by all the followers of the Rig Veda,† declares the mode of adopting a son to consist of the giving and receiving and the sacrifice. I quote the whole passage below as it will tend to elucidate the subject.‡

---

* STOKES's *Hindu Law Books* p. 58.

† See the *Samskara Kaustubha*, leaf 48, p. 1.

‡ BORRADAILE's *Vyavahara Mayukha*, Chapter IV., Section V., 8:—Saunaka thus declares the mode of adopting a son:—"I, Saunaka, now declare the best adoption: one having given two pieces of cloth, a pair of ear rings, a turban, a ring for the forefinger, to a priest religiously disposed, a follower of Vishnu and thoroughly read in the Vedas: having venerated the king and virtuous Brahmanas by a Madhuparka; with a bunch of sixty-four stems entirely of the Kusa grass and fuel of the palasa tree also: having collected these articles, having earnestly invited kinsmen and relations; having entertained the kinsmen with food; and especially Brahmanas: having performed the rights commencing with that of placing the consecrated fire and ending with that of purifying the liquid butter; having advanced before the giver, let him cause to be asked thus 'give the boy.' The giver, being capable of the gift, (should give) to him with the recitation of the five prayers the initial words of the first of which are *Ye Yadnyena*, &c. having taken him by both hands with recitation of the prayer commencing '*Devasya tva*, &c., having inaudibly repeated the mystical invocation *Angad ange*, &c.: having kissed the forehead of the child, having adorned with clothes and so forth, the boy bearing the reflection of a son: accompanied with dancing, songs, and benedictory words, having seated him in the middle of the house: having according to ordinance offered a burnt offering of milk and curds (to each incantation) with recitation of the mystical invocation *Yastva hrida* the portion of Rig Veda commencing '*tubhyam agne*,' and the five prayers of which the initial words of the first are *Somo dadat*, &c. let him close the ceremony."

It will be observed that all the preparations for the ceremony are completed, and that what is called "venerating the King and the virtuous Brahmanas" by Saunaka, is thus a mere formality. Besides I may mention that the words, "having venerated the King and virtuous Brahmanas with a Madhuparka," do not occur in the original Sanskrit edition, nor in the authorized Marathi translation published under the auspices of the Government of Bombay. They must, therefore, have been found by Mr. Borradaile in some modern copy, and appear to be an innovation introduced by some compiler from what he saw in the Dattaka Mimansa of Nanda Pandita.

The above ceremonial is that from the Mayukha.

A more ancient, and also a more celebrated authority, is Yadnyavalkya, with the comments of Vidnyaneswara. The work is known as the Mitakshara, which is accounted good law throughout the greater part of Hindustan. Let us see what it has to say. Chapter I., Section XI., verse 13, runs thus :—"The mode of accepting a son for adoption is propounded by Vasishtha : 'A person being about to adopt a son, should take an unremote kinsman, having convened his kindred, and announced his intention to the King, and having offered a burnt offering with recitation of the holy words in the middle of his dwelling.' "*

As Saunaka is the great lawgiver of the followers of the Rig Veda, so is Baudhayana that of the followers of the Taittiriya, or the Black Yajur Veda.† The ceremony of adoption laid down by Saunaka and Baudhayana generally agrees with that prescribed by Vasishtha (as above quoted), with the exception of the *Mantras* [or sacred verses], with which the sacrifice is enjoined to be performed. These three are the principal *Rishis* [or sages], whose rules prevail on this subject at present. Let us inquire what they have to say in regard to the alleged sanction or consent of the king. Baudhayana and Vasishtha have laid down that after the materials for the ceremonial have been

* COLEBROOKE'S *Mitakshara*, pp. 310 & 311.

† *Dattaka Mimansa*, Section V., 42 ; *Dattaka Chandrika*, Section II. 16.

prepared, &c., &c., and after "*inviting and informing the kinsmen before, or in the presence of the Raja,*" the acceptance of the son should be made. The original of which the above italicised passage is my version is as follows :—

"बन्धूनाहूय राजनिचावेद्य or
"बन्धूनाहूय राज्ञे निवेद्य."

Colebrooke and Sutherland have translated the passage thus :—"having convened his kindred and announced his intention, or made a representation, to the Raja."*

There is not much difference between their translations and my own, as far as they affected the decision of the question now at issue. Because according to either version, as well as my own, it will be perceived that only an announcement is to be made or an intimation given to the Raja. No sanction is required, and no rule for asking *anybody's* permission has ever been laid down in any Hindu law book that is known in this country. Indeed, I cannot well conceive the grounds on which the monstrous assertion that the Sovereign's *sanction* is required to render an adoption valid is based. The Vedas and Shastras lay it down as an obligatory duty on their followers that they *shall* discharge their duty to their ancestors by begetting a legitimate son, or, where that is impossible, by adopting one.†

* COLEBROOKE'S *Mitakshara*, Chapter I., Section XI., and SUTHERLAND'S *Dattaka Chandrika*, Section 11, 11—16; and the same author's version of the *Dattaka Mimansa*, Section V., 31 & 42.

† *Taittiriya* (or the Black) *Yajurveda*, *Ashtaka* VI., *Prapathaka* III., *Anuvaka*, 10 :—

"जायमानो वै ब्राह्मणस्त्रिभिर्ऋणवा जायते ब्रह्मचर्येणर्षिभ्यो यज्ञेन देवेभ्यः प्रजया पितृभ्यः । एषवा अनृणोयः पुत्री."

Translation :—"A Brahamana immediately on being born, is produced a debtor in three obligations: to the holy saints, for the practice of religious duties: to the gods for the performance of sacrifice: to his forefathers, for offspring. Or he is absolved from debt, who has a son." Also, *Aitareya Brahmanam*, BOOK VII., Chapter III., 1: pp. 460-2 of DR. HAUG'S *Translation*.

No Sovereign in India has yet dared to invade the right which arises from the above duty; and whatever the East India Company may have done before, I confidently trust that the Queen's Proclamation will now be the palladium of all our rights; of the high as well as of the low; of the independent Princes in alliance with the British Indian Empire, of feudatories and of jahgirdars, as well as of the meanest subjects of the British Raj.

Not only is there no authority for holding the position that the Sovereign's sanction is required; but, on the contrary, I will show further on, that the announcement to the Rajah may be dispensed with, and that the omission of this part of the ceremonial does not invalidate any adoption. Before going to that part of the subject, I will proceed to explain why invitation to kinsmen, and announcement to them, in the presence of the Rajah, are recommended rather than commanded by the lawgivers.

Mitakshara, Chapter II. Section XI., treats of what is called *Dattáprádánikam* or subtraction of gift, which is thus defined by Narada :—

"दत्त्वा द्रव्यमसम्यग्यः पुनरादातुमिच्छति, दत्ताप्रादानिकं नाम व्यवहारपदंहि तत्."

Translation :—"When a man desires to recover a thing, which was *not duly given*, it is called subtraction of what has been given; and this is a title of administrative justice."*

The italics are mine.

To prevent *unduly given* gifts, and consequent litigation, Yadnyavalkya lays down the following rule :—

"प्रतिग्रहः प्रकाशः स्यात्
स्थावरस्यविशेषतः"

* *Vyavahara-Mayukha*, Chapter IX., 1.

† *Mitakshara* (Sanskrit Edition. Bombay, 1863, leaf 71, p. 1) Book II., Chapter XI., verse 2.

Translation :—" Acceptance [of a gift] ought to be open ; especially [that] of immovable property.

On this Vidnyáneswara (author of the Mitákshara) remarks :*—

"प्रतिग्रहणं प्रतिग्रहः सःप्रकाशःकर्तव्यः विवादनिराकरणार्थम् ॥ स्थावरस्यच विशेषतः प्रकाशमेव ग्रहणं कार्यम् ॥ तस्य सुवर्णादिवत् आत्मनि स्थितस्य दर्शयितुमशक्यत्वात् "

Translation :—" Acceptance [of a gift] ought to be openly made to prevent [future] litigation ; especially that of immovable property: the taking of which ought to be only in an open manner. Because, immovable property cannot be thus shown like gold, &c. [which is portable], and can be produced [out of one's possession]."

Viramitrodaya, another authority, states :—

"देयोक्तिप्रसंगेन प्रतिग्रहे प्रकारविशेषं दर्शयति याज्ञवल्क्यः ॥ 'प्रतिग्रहः प्रकाशः स्यात् स्थावरस्य विशेषत इति." प्रकाशः प्रकटः ससाक्षिक इति यावत्. पुत्रप्रतिग्रहे *प्रकारविशेष उक्तो वसिष्ठेन;—पुत्रंग्रहीष्यन् बंधून् आहूय राजनिचावेद्य निवेशनस्य मध्ये व्याहृतिभिर्हुत्वा, अदूरबान्धवम् सन्निकृष्टमेव गृण्हीयात्इति."†

Translation :—" At the time of declaring what is *Deya* (*i. e.* fit to be given), Yadnyavalkya speaks of a particular rule about acceptance of gifts [thus] : Acceptance [of a gift] ought to be open ; especially that of immovable property ; open, [that is] public or in the presence of a number of people ; or, in other words, in the presence of witnesses. About the acceptance of a son, a special mode is [thus] spoken of by Vasishtha :—The acceptor of a son, having invited his kindred, and told them before (or in the presence of) the King, and

* See last note.

† See Calcutta Edition of 1815, leaf 122, p. 2.

having performed the sacrifice with the sacred texts called *Vyarhiti** should take an unremote kinsman" [in adoption].

We see here very plainly the object of the invitation and the announcement. However, to proceed with our authorities.

The Samskara Kaustubha by Anantadeva, a work of considerable authority, states that Saunaka is followed by the Rig-vedis and Baudhayana by the Yajurvedis. It then cites the particulars of the ceremony, which are generally the same as before. As regards inviting the kindred and giving notice to the King, it states thus :—

"बन्धूनाहूय मध्ये राजनिचावेद्य" &c.†

Translation.—"Inviting the kindred, and, in the midst announcing before the King."

Further on, the same lawgiver amplifies upon the expression (मध्ये), *Madhye, or in the midst,* used in the above passage :—

"मध्येइति बन्धुसमक्षं राजनिआवेदनम् इत्याशयः"‡

Translation.—"In the midst ; that is, in the presence of the kindred, before the Rajah, the announcement [is to be made] ; this is the object."

The Nirnaya-Sindhu, of Kamalakarabhatta, another work of established reputation, also bears out the view above stated.

The commentator Krishnabhatta adds:—[§ "राजाच ग्रामपाल इत्याहुः,"‖ which means "[to] the Rajah, which [by former writers] is said to mean the village authority or protector."

---

* The *Vyarhitis* here mentioned are four भूः ; भुवः ; स्वः ; भूर्भुवः स्वः

† Leaf 47, p. 2, of the edition published at Bombay in 1861.

‡ *Ibid.*

§ It also states as before "बन्धूनाहूय राजनिचावेद्य" of which I have given my translation above.

‖ *Nirnaya Sindhu, Parichheda* (or Section) III.

From the above authorities it will be clearly perceived that inviting the kinsmen, and announcing to them the adoption in the presence of the Rajah is with the view of obtaining publicity and preventing future disputes and litigation: a provision similar in its intention to having witnesses at marriages. That this is the proper interpretation of the above passages is further borne out by other authorities. Sir Thomas Strange, in his learned work on Hindu law (already cited), states that, with a view to certainty, "the law encourages, if it do not stipulate for, whatever is calculated to render it public and solemn. Hence attendance of relations, with notice to the local magistrate or ruling power of the place, is expected, but may be dispensed with."* Further authorities for this position are cited by that learned judge, to whose works I must refer my readers.

The word "Rajah," as used in the above passages, is explained to be the Gramaswami [*i. e.*, the chief, head, or lord of the village] by the Dattaka-Mimansa of Nanda Pandita.†

The Dattaka-Chandrika by Devanuda-Bhatta, [Section II., 3 and 4], mentions that the King should be venerated by Madhuparka "If the King be at a distance, the head man of a village should be invited and thus venerated."

The commentator on the Nirnaya Sindhu also explains "Rajah" to be the Gramadhisha, or lord of the village.‡

That the invitation to relatives and announcement before the Rajah are not indispensable ceremonies, appears likewise from Steele's commentaries on the law and customs of Hindu castes within the Dekkan provinces subject to the Presidency of Bombay, published by order of the late Mountstuart Elphinstone. "It is enjoined," says he, "that notice of an adoption should be given to the relations within the Sagotra Sapinda, and to the Rajah, though

---

* Vol. I., Chapter IV., pp. 94, 95.

† See Section V., 4, 5. and 6: STOKES, *Hindu Law-books*.

‡ See the passage referred to in last Note in page 13.

no provision appears in case of their disapprobation, even in adoptions by widows."*

Mr. Justice Strange, of the High Court of Madras, also states:—"There should be attendance of relations and notice to the ruling local authority, and also sacrifice, oblation and prayer; but the non-observance of these formalities will not invalidate an adoption; saving as respects the *datta-homam*, or sacrifice by fire."†

From the above exposition of the law on the subject, it is clear that adoption consists in the gift and acceptance of the adopted. A sacrifice follows the adoption; but when the adopted is of the same *gotra* (clan) with the adopter, it may be dispensed with.‡ Nobody's consent or sanction is *necessary*. This statement to a Hindu would appear superfluous, nay, almost bordering on the ridiculous. For the Vedas and the Shastras enjoin adoption as a sacred duty. The love of transmitting one's name and possessions to posterity is not wanting in the Hindu breast. Tradition and history conspire to strengthen the desire which the highest commands of religion and self-interest have invoked. Hence, on the failure of legitimate male issue, a Hindu, high or low, a Rajah or a peasant, considers it his right, as well as his duty, to perform an adoption for the perpetuation of his family.

The law in this respect is the same for all; and my remarks are applicable to all the Hindus inhabiting this vast country, and professing their allegiance to the Vedas, the Shastras, and the later law-books binding on my co-religionists. Whether a man is a Rajpoot, holding sway over an allied Principality in Rajpootana, or a Maratha, owning a Raj in Malwa; whether he is a Chief, holding a dependent jahaghir in the Southern Maratha country, or a titular Prince like the Rajah of Tanjore; whether he is a talookdar in Oude, or a Khote in Southern Konkan; whether he is a zemindar in Bundelkund, or a patil in the Deccan, it matters nothing. The Hindu law which I have above stated is the same for all. The right of a Hindu to adopt is absolute. To say that he can adopt a son to

* Page 51.

† Section 196, T. L. STRANGE'S *Manual of Hindu Law*, 2nd Edition.

‡ See authorities cited in the first Note in page 7.

perform his funeral rights, but that such son cannot inherit that man's worldly possessions, is a mere mockery. It is making a distinction without a difference. It is nothing less than adding insult to injury. In the case of many of the native Rajahs, such as the Gaikwar, Sindia, Holkar, the princes of Rajpootana, and similar Powers in alliance with the British Government, there is no pretence for British interference with adoptions. There is no authority in Hindu law, or any other law applicable to the subject, requiring such Princes to ask the consent of a stranger friendly Power, which has bound itself by solemn treaties not to interfere with their affairs, and has acknowledged them to be the rulers of their own territories. Their case seems to me to be the strongest of all, as I shall show at greater length hereafter.

I, therefore, repeat that a Hindu's right to adopt a son under the rules laid down in the Shastras is absolute. Indeed, no Sovereign entitled to the name has ever yet thought of disturbing this right, except the late East India Company, and its Governors and Governors-General. The lamentable accounts of the tyranny and misrule prevailing under the last of the Peshwas, the infamous Baji Rao, show that he would, and did, confiscate jaghirs and other private property for reasons which I should be ashamed to commit to paper. And if, as Mr. Knight says,* precedents like these are to be treated as law, there is no reason for attempting to argue on any subject. For it would amount to this, that anything might be proved by anything. Sir Charles Jackson (at page 9) quotes Steele, in support of the position that "Enamdars and Wuttundars" should have the consent of the Sirkar or Government for adoption. But he forgets the law, as it is expounded on the pages following, viz that "an adoption concluded agreeably to the Shastras is not annullable." And that, according to that and other authorities, whatever may be the moral effect of the omission to take such consent, the so-called consent is not essential to the validity of an adoption, especially when the adopted is of the same gotra [*i.e.*, clan]. If, instead of the vague expression,

* See *The Inam Commission unmasked*, by ROBERT KNIGHT, Editor of the *Bombay Times* page 23.

"the law which requires the sanction of the government," Sir Charles Jackson had quoted the authorities which support him, I should have been better able to meet each and every one of his propositions. But during the course of the last fifteen years of inquiry and research, I have failed to discover even the remnant of any such law. The authority of such persons as Captain Cowper and Mr. Hart is of no value. The proceedings of the Inam Commission, which their misapplied talents supported, have received their due treatment from Mr. Knight's pen. I wish I could forget the misdeeds of this Commission easily; but this I know, that any one of them, if attempted in Europe, would have ruined the reputation of any English statesman.

I wish natives of India had had the moral courage to lay unvarnished accounts of these grievances perseveringly before their rulers; for had these been freely ventilated, and impartially inquired into, the mutiny and rebellion would never have occurred.

CHAPTER II.

THE DOCTRINE OF LAPSE.

In the last chapter, I attempted to show what were the necessary parts of an adoption; and I then explained more particularly that the consent of the King was not required by Hindu law to make the adoption legal.

I may mention that in regard to adoption, as well as in reference to all the essential duties enjoined by Hindu law upon its followers, there is no distinction between nobleman and gentleman. The law for all is alike. The Sovereign as well as the subject are under its equal sway. When the annexationists, therefore, treat the cases of private individuals and Princes as distinct; nay more, when they propose to treat one man (*i.e.* a Prince) in two ways, in such a matter as adoption, allowing his son to succeed to personal, but not to territorial property, they are bound to show their authority for so doing. As above stated, I say the Hindu law contemplates nobody's restraint upon the adopter, who is just as free to adopt, according to the Shastras, as he is free to marry. The Paramount State might, with as much propriety, prohibit a man's marrying in order to prevent his begetting an heir to his Principality or estate, as forbid him to adopt.

Sir Charles Jackson (p. 5) asserts "when the Hindu is a Prince holding his Principality subordinate to, or as a gift from, a Paramount State, it is a condition of succession to the Principality, that the adoption be made with the consent of such Paramount State." "His private property," says he, "will pass to the adopted son whether the Paramount State has, or has not, consented to the adoption; but in the absence of such consent, the Principality reverts to the Paramount State."

This is the cardinal doctrine of the Dalhousie school. This is the foundation of the so-called doctrine of lapse. Sir Charles Jackson is careful not to give his authorities. Is not the supposition natural that he has none to give? The law which is given in the above extract is, according to his own statement (see p. 5), an "exception"

to the "general rule" of Hindu law. The onus, therefore, lies upon him to show his authorities for this exceptional position.

Sir Charles Jackson has taken the cases of Sattara, Nagpore, Jhansi, and Sumbulpore. It is not my purpose at present to treat of these States, which have been already absorbed. I wish to take my stand upon the general position assumed by the annexationist school in regard to adoption, and prove that in law and practice it is untenable. Sir Charles Jackson cites (p. 10) Sir George Clerk as an authority in his favour. "Sir George," he says, "opposed the annexation of Sattara, yet felt compelled to admit that the sanction of the Paramount State is by custom required to render 'an adoption to a Principality valid. In the time of our predecessors this was a source of profit to the treasury.'" Unfortunately for the advocate of Lord Dalhousie, Sir George has spoken out his sentiments in unmistakeable terms. In his dissent from the last despatch of Sir Charles Wood, disallowing the Mysore adoption, he clearly enunciates his views thus:—"This new doctrine regarding adoption is so novel and unjust, so opposed to all custom and religions in India, and so utterly inconsistent with the course of administration as previously exercised during the paramountry of Hindoos, Mahummedans and ourselves, that I can only conceive it to be the result of wild counsel prompting an indiscriminate gratification of a selfish policy which it is endeavoured to veil under a plea of expediency.

A fact well known to those of us who have been much in the way of observing the circumstances of adoptions of heirs to Chiefships, and to those who have made researches with a view to elucidate the subject, as Sir Henry Lawrence in the Kerowlee case in 1853, and Lord Canning on the general question in 1860, is that, *if guided by the custom of the country and the practice of all our predecessors, our concern in adoptions consists* ONLY *in adjusting the rival pretensions of two or more such heirs*; a precaution which we and our predecessors have made it our duty to exercise in the interests of the peaceable public generally. HENCE *our sanction may in one sense be said to be necessary;* for, naturally, a record of it is always sought by the rightful or by the successful claimant. *Hence it is, too that, the confirmation has never been refused. Hence it is that I* NEVER *found an instance on the old records at Delhi, and that*

*I never knew one occurring within my experience of our own times, of any chiefship, either Raj or Sardarree, great or small, being held to have escheated, excepting for felony to the Paramount State. At length the Calcutta Government led off with that flagrant instance of the barefaced appropriation of Sattara."** The italics are mine.

What, then, is the "custom" Sir Charles Jackson alludes to? The custom is for the big State or Paramount Power to adjust "the rival pretensions of two or more heirs." This is the testimony of Sir George Clerk, a veteran political, twice Governor of Bombay, and at one time the able Resident at Delhi, the very source whence all information on such points was to be had. Does not this coincide with the object of inviting the *Rajah* or "head of the village" to be present at the ceremony, as described in the preceding chapter?† It is to secure publicity and prevent future disputes, that the invitation is made, not because the adoption would be invalid.

However, to proceed with our authorities. The States of Rajputana are the oldest Hindu States in India. They are independent States, acting in subordinate co-operation with the British Government.‡ Their Rajahs are Sovereign Princes who reign supreme within their dominions. They generally pay a certain sum to the British Government, which on its part undertakes to protect them from external enemies. The British Government is bound by treaties not to interfere in their internal affairs; and unless some future Mangles calls them merely "deeds of gift" and personal contracts, and considers *perpetuity* as an eastern expression for a long period (say of fifty or ninety years), these States must subsist as long as the sun and moon shine on them and the British Empire. The law or custom in regard to adoption in these States is thus stated by Colonel Tod.§

"Adoption:—The hereditary principle, which perpetuates in these States their virtues and vices, is also the grand preservative of their

* *Papers relating to Mysore*, pp. 71 and 72.

† See page 11, and the following.

‡ See *Aitchison's Treaties* vol. vi, pp. 10, 34, 45, 65, 72, and following.

§ *Annals and Antiquities of Rajasthan* by Lieut. Colonel JAMES TOD, vol. i., p. 190.

political existence and national manners: it is an imperishable principle, which resists time and innovation: it is this which made the laws of the Medes and Persians as well as those of Rajpoots, unalterable. A Chief of Mewar, like his Sovereign, never dies: he disappears to be regenerated. 'Le roi est mort, vivele roi,' is a phrase, the precise virtue of which is there well understood. Neither the crown nor the greater fiefs are ever without heirs. Adoption is the preservative of honours and titles; the great fiefs of Rajasthan can never become extinct."

If a Chief or a Prince dies without making an adoption, he is also well provided for. Colonel Tod says* that "on sudden lapses, the wife is allowed the privilege, in conjunction with those intersted in the fief of nomination, though the case is seldom left unprovided for: there is always a presumptive heir to the smallest subinfeudation of these estates. The wife of the deceased is the guardian of the minority of the adopted."

The idea that a Rajput Prince "never dies," and that "he disappears to be regenerated," is one which is derived from Hindu law, and is held fast, religiously and politically, by the whole of India. It has its root in the notion of posthumous existence—the doctrine that a man is born again in his son. The sacred Vedas themselves inculcate it. The Aitareya Brahmanam states this very clearly,† and is identical with the high principle "in the pure Roman jurisprudence," which according to Mr. Maine is "that a man lives on in his heir—the elimination, if we may so speak, of the fact of death."‡

"Among the Hindus, says Mr. Maine, "the right to inherit a dead man's property is exactly co-extensive with the duty of per-

* Tod's *Annals*, vol. i. p. 191.

† Haug's *Translation*, Book VII., Chapter III., 6 and 7 p. 461. 6. "The husband enters the wife (in the shape of seed), and when the seed is changed to an embryo, he makes her a mother, from whom, after having deen regenerated in her, he is born in the tenth month. 7. His wife is only then a real wife (*jaya* from *jan* to be born) when he is born in her again. The seed which is placed in her, she developes to a being and sets it forth."

‡ Maine's *Ancient Law*, p. 190.

forming his obsequies. If the rites are not properly performed, or not performed by the proper person, no relation is considered as established between the deceased and anybody surviving him; the law of succession does not apply, and nobody can inherit the property. Every great event in the life of a Hindu seems to be regarded as leading up to, and bearing upon these solemnities. If he marries, it is to have children who may celebrate them after his death; if he has no children, he lies under the strongest obligation to adopt them from another family, with a view to the funeral cake, the water, and the solemn sacrifice."*

Indeed we are told by Colonel Tod that "the laws of Rajpootana political and religious, admit of no interregnum, and the funeral pyre must be lit by an adopted child, if there be no natural issue."

The law and practice as they existed in Central India are similar to the above. One remarkable example is given by Sir John Malcolm,† from which we perceive with what feelings the right of adoption was regarded; and which proves that there could be no lapse in the Rajput States.

Three other instances of adoption under different circumstances are given by Malcolm,‡ in none of which the doctrine of lapse or the right of escheat was thought of or enforced by any Paramount Power, Mahomedan, Hindu, or British.

---

* MAINE'S *Ancient Law*, p. 191.

† MALCOLM'S *Central India*, vol. ii., p. 62, note:—Zalim Singh, the regent of Kotah, on an impression that a complaint had been made to me by the relative of a deceased small renter in the district of Baroda, wrote on the 8th July, 1820, to his agent with me, as follows:—'Tell the General, if the complaint is made, that the usage of this country, when a man dies without children, is to give his estate to his wife, who enjoys it for her natural life. It goes after that to the sons whom she has regularly adopted. In failure of such heir to the nephew of the deceased; and on their failure to the nearnest relation.'

"I asked the Vakeel, if by the usage of Kotah, the Government had no right to the property of a man who died without children. His reply was, 'None beyond expressing a desire, that part of the property, if large, should be expended for charitable purposes.'"

‡ *Central India*, vol. i., pp. 109, 160, 284.

Captain James Grant Duff notices several cases of adoption by native Princes according to Hindu law and the custom of the country.* No one at that time thought of aiming at the "just" accessions of territory, of which Sir Charles Jackson and the Duke of Argyll are the advocates.

The Honourable Mountstuart Elphinstone, after enumerating the different kinds of sons mentioned by Manu, says,† "that the whole of these sons, except the son of a man's body, and his adopted sons, are entirely repudiated by the Hindu law of the present day."

The same eminent statesman thus writes, in 1850:‡—"There is no native State to which the recognition of its succession by the British Government was not of the highest importance; but none of them, I conceive, ever imagined that that Government had a right to regulate the succession as feudal lord, or had any pretensions to the territory, as an escheat, on the failure of heirs to the reigning family." Again he says, "Our relations with the principal states (the Nizam, the Peshwa, Sindia, &c.) were those of independent, equal Powers, and we possessed no right to interfere in their succession, except such as was derived from our treaties with them."

Again, Sir Charles [afterwards Lord] Metcalfe, in his celebrated Minute on adoption, states his opinion as follows:§—"Those who are Sovereign Princes in their own right, and of the Hindu religion, have, by Hindu law, a right to adopt, to the exclusion of collateral heirs, or of the supposed reversionary right of the Paramount Power; the latter, in fact, in such cases, having no real existence, except in the case of absolute want of heirs, and even then the right is only as-

* Amongst others see his *History of the Marathas*, vol. ii., p. 337, vol. iii., pp. 27, 28, 321.

† *Elphinstone's History of India*; 3rd edition, p. 35, note 87.

‡ *Memoirs of the Hon. Mountstuart Elphinstone*, by Sir EDWARD COLEBROOKE, Bart., M.P. See *Journal of the Royal Asiatic Society of Great Britain and Ireland*, volume xviii.. p. 320.

§ *Selections from the Papers of Lord Metcalfe*, by JOHN W. KAYE, pp. 318 and 319.

sumed in virtue of power, for it would probably be more consistent with right that the people of the State so situated should elect a Sovereign for themselves.

"In the case, therefore, of Hindu Sovereign Princes, I should say that, on failure of heirs male of the body, they have a right to adopt, to the exclusion of collateral heirs, and that the British Government is bound to acknowledge the adoption, provided that it be regular and not in violation of Hindu law. The present Maha Rao of Kotah was adopted, and his case affords an instance in which the right of adoption in a tributary and protected State was fully discussed and admitted by the British Government as the Paramount Power."

I will not weary my readers with further authorities. The Parliamentary Papers of 1850, respecting the Sindia, Holkar, and Dhar successions, are full of similar evidence as to the usage as regards succession by adoption in native States in alliance with the British Government. The opinions and statements of Major Stewart and Mr. Sutherland, Residents of Gwalior; of Mr. Martin, Sir C. M. Wade, Mr. Bax, and Sir R. Hamilton, Residents at Indore; of Sir John Low, and of the Government of India itself, up to the Sattara annexation, have all been consonant to Hindu law, and the usage of the country. The last witness I shall therefore cite is the late Earl Canning.

In his despatches of the 30th of April, 1860, Lord Canning writes, "I believe there is no example, whether in Rajpootana or elsewhere, of a Hindu State lapsing to the Paramount Power by reason of that Power withholding its assent to an adoption;" and again, "We have not shown, as far as I can find, a single instance in which adoption by a Sovereign Prince has been invalidated by a refusal of assent from the Paramount Power."* The evidence of Captain Shepherd and Sir H. Lawrence, quoted by Mr. Eastwick in the same Mysore Papers (pp. 74, 75), points also in the same direction. And, in regard to the first case, namely, that of Sattara, dwelt upon by Sir C. Jackson and the Duke of Argyll, I refer them to the speech of Mr. Sullivan at a meeting of the Court of Proprietors on that ques-

* *Papers relating to Mysore*, p. 74.

tion, and a letter of Mr. Elphinstone to Sir E. Colebrooke, now published for the first time in the *Journal of the Royal Asiatic Society*.*

Mr. Willoughby's reasoning in defence of the Sattara annexation receives the *coup de grace* from this high authority, and the whole web of what Sir Charles Jackson calls "Lord Dalhousie's 'text book on adoption'" (p. 12), is torn into shreds. Mr. Elphinstone says,† —"Mr. Willoughby, and those who adopt his reasoning, proceed to argue that *some* dependent chiefs are subject to this rule, and, *therefore*, the Rajah is subject to it. They instance many inamdars, jageerdars, &c., but can they show any Prince, who had been acknowledged as a Sovereign, to whom the rule had been applied at the time of the treaty? Can they deny that there are now many Sovereign Princes under limitations similar to those on the Rajah, over whom such a right has never been used or pretended to? Nobody will say in Parliament that the adoption by Sindia, the Nizam, the King of Oude, &c., would not be *legal* without our confirmation, or that a son so adopted could not be an heir in the usual sense of the term; nor will anybody allege, that on the extinction of the families of those Princes, their dominions will devolve on us as an escheat. The claims founded on the general usage, therefore, fall to the ground."

I give this rather long extract unwillingly; but it is difficult to condense Mr. Elphinstone's pregnant sentences; and the "textbook on adoption" has been so largely used by the annexationists, that I felt myself bound to let the public have the other side of the question.

I could easily give more evidence, if needed, but I forbear. I now ask the reader, whether Sir Charles Jackson is right in saying that the Paramount Power can go on absorbing the States of its allies in the way he advocates, according to law and usage as they prevail in Hindustan?

That the British Government in India is now stronger than it was a century ago is nothing to the purpose. I am certain it will not wilfully use its strength for wrong. It will never, I trust, leave

* Vol. xviii., pp. 318 and 319.

† *Ibid*, p. 318.

the path of truth and justice. These, when pointed out, must be its guides. Her Gracious Majesty has intimated to us, in the memorable Proclamation of 1858, how she desires to rule over us, and in what manner her Government will treat her allies, the Princes of India; and I would beg of her responsible advisers to do as they would be done by. I grieve to see that the wisdom of the Proclamation issued by Lord Derby's Cabinet is questioned by a man so right-aiming in other matters as the Duke.* That document has been worth more than the 70,000 British bayonets now in India. It is a tower of strength to both countries; and any statesman who makes light of it is unconsciously sapping Indian faith in the honour of Great Britain.

To proceed.—The annexationists must bear in mind that "a weak Power does not surrender its independence and right to self-Government by associating with a stronger, and receiving its protection. This," says Chancellor, Kent, "is the settled doctrine of the law of nations."†

When the Princes of India sought the protection of the British power, did they do so with the view of annihilating themselves? These Rajahs entered into treaties of perpetual amity and friendship, and trusted to the word, the faith, the honour of England. do perpetual amity and friendship mean perpetual jealousy, permanent dread of being levelled to the dust, agreeably to the Mangles theory? I am sure that those who are not blinded by a superstitious belief in their own crotchets will give only one reply. The Hindu law, the usage of the country, are clearly in favour of the Princes. Suppose, for a moment they were neither favourable to nor against them. Are there no treaties? If there are, are these not acknowledgments of the sovereignity of these Princes by the British Government? That sovereignty may be qualified or unqualified; the authority of the Sovereign may extend over five miles or over 50,000 miles—in the eye of the law it is the same. If the Principality is a sovereignty, the succession to its throne can only be regulated by

* *India under Dalhousie and Canning*, by the Duke of ARGYLL, pp. 105 and 106.

† *Kent on American law*, vol. iii., p. 511.

its own internal laws. There cannot be the slightest pretence for a strong allied Power to step in and impose restrictions on the choice of a successor, except in conformity with the law of that State or in accordance with some treaty engagement. Any other kind of interference is illegal and unjust, and is merely the effect of brute force. An ally, although powerful, is only an ally. To talk of Scindia, the Nizam, and such others as feudatories, as though they were Earls and Dukes, is to institute comparisons between things which differ from one another as the night does from the day. There is no doubt that the British, being the strongest Power, is able to dictate in many cases to her weaker neighbours. In the case of successions, it is first consulted, because its countenance settles the question in favour of some candidate, who is sure of his seat on the throne; and all fear of internal dissensions is removed. But where is the argument for annexing States in such circumstances? As Mr. Ludlow has so tersely put it, if, from the power of consenting to adoptions, you deduce the power of refusing them, and of confiscating the States so circumstanced, the same doctrine "would authorize the appropriation of partnership interests by coparceners, of shares in a public company by boards of directors, of the fortunes of wards by their guardians, of the fee-simple by a tenant for life:"* I would add, of deposits by bankers, of our children's goods by our neighbours, and of disputed property by the judges adjudicating the claims to it of rival suitors. And yet, what does the argument of the annexationists amount to, if not to this?

Again, it is the boast of the English law that the Sovereign never dies† You talk of the demise of the crown. Is not the self-same principle of equal force in India? In Rajpootana, we find that the law admits of no interregnum. What else is it but the principle "rex nunquam moritur" expressed in a different form? The law of nations and the safety of the Indian Princes demand that this principle should be jealously guarded. Whilst on this subject I must con)

---

* *Thoughts on the Policy of the Crown towards India*, by J. M. Ludlow Esq., Barrister-at-law, p. 119.

† Broom's *Legal Maxims*, p. 51.

fess my astonishment at a passage from Mr. Halliday's Minute quoted by Mr. Ludlow:—"Colonel Low," says Mr. (now Sir Frederic-Halliday, "announces a doctrine regarding succession to a Hindoo Principality, which, *except as regards Rajpoot States*, I never heard of before, which, I am satisfied, no Hindoo lawyer ever heared of, and which would make it impossible that any Hindoo succession should ever fail."

This betrays the cloven foot of annexation. Why should Mr Halliday wish it to fail? And how can such wish be reconciled with her Majesty's gracious Proclamation?

"We desire no extension of our present territorial possessions and while we will permit no aggressions upon our dominions or our rights to be attempted, we shall sanction no encroachments on those of others; we shall respect the rights, dignity, and honour of native Princes as our own."

There is no shuffling here. The words are clear and capable of only one interpretation; and that is that there shall be no more annexations under colour of a law or usage of escheat *which in reality has never existed.*

To recapitulate what has been advanced in the preceding pages:—The Hindu law authorizes its followers to adopt a son in a certain mode; this power of adoption in a Hindu is both a right and a duty; nobody can *legally* take away this right (the Paramount Power itself not excepted). In the case of Sovereign Princes, law and usage have settled the mode of succession; and their relations with the British Government have been founded on treaties which must be observed. Were none of these safeguards in existence, the law of nations would come to the rescue, and determine by the customs of each particular State how its succession ought to be regulated. If, in the face of these facts the Lord paramountry of Great Britain is still to be paraded before the native public and the Princes of Hindustan, as a pretext for spoliation, I say in the words of a great Indian statesman, the late Mr. Tucker,* "True, we wield the power of the sword, and our political supremacy

* TUCKER'S *Indian Government*, by J. W. KAYE. p. 251.

is everywhere acknowledged; but we do not possess, and never can possess, the power to violate treaties—the power to do wrong and to commit injustice—the power to dominate over those who cannot resist us, while we hesitate to enforce it in our relations with those States who enjoy, with a larger territory, a greater degree of independence."

I shall now pass on to a few general reflections on the subject treated of, in its relation to the future of the British Empire in India.

CHAPTER III.

GENERAL OBSERVATIONS.

I BELIEVE I have now shown the untenableness of the doctrine of lapse, which has no foundation in the customs of this country. Sir Charles Jackson, after a large amount of special pleading on this question, winds up his book by a carefully-worded eulogy of Lord Dalhousie, and the Duke of Argyll argues that his policy has been the "salvation of India."*

When the advocate has a bad case, his best policy is said to be to abuse the attorney on the other side. Sir Charles seems, *mutatis mutandis*, to be following this practice by branding all the hostile criticism as the "clamour of paid advocacy."† Admitting the great abilities and varied talents of Lord Dalhousie, is it pretended by his admirers that he was more than a man? Is not a defence *per faste, nefas* damaging to the defended? We Hindus are regarded as idolators; though I might say some of us are better in that respect than some of our English fellow-subjects, and, with the education which we are thankfully receiving from the British Government, our materialism is fast wearing away. I regret to see, however, that Great Britain is retrograding rather than improving. Her sons, like the two authors now before me, will not acknowledge the blunders of her statesmen, but set them before us as models of perfection. Is this not asserting the doctrine of infallibility? Lord Dalhousie, like other men, was liable to error, and his errors as a public man are common property to be used as warnings from whence we may extract edification and improvement.

The dissatisfaction caused by the policy of "confiscation"‡ was far and wide-spread over the length and breadth of Hindustan. There were men in all parts of the country who were filled with alarm at what was passing around them. Statesmen in England lifted up their voice in defence of the right, but in vain. I will only quote one instance, from a work published in 1853 by one of our neighbours

* *India under Dathousie and Canning*, p. 68,

† *Lord Dalhousie's Indian Administration*, p. 172; TUCKER'S *Indian Government*, p 250.

in Ceylon, Mr. John Capper, late editor of the *Ceylon Examiner*. The passage is characteristic. Mr. Capper says:*—

"I cannot, I must confess, agree with those advocates of universal Indian annexation, who persist in attributing all our failures in these cases to stopping short of the complete subjugation of every independent State. Their advice is precisely that of the great quack vegetarian, when told by a patient that his pills were inefficacious, although his instructions had been most rigidly observed. The vendor of pills declared that the sick man could not have taken enough of them; to which the other replied, that he had swallowed the largest dose prescribed in any case, viz, a whole boxful. 'But,' asked the impudent quack, 'did you swallow the box also?' The patient was staggered, and declared that such a proceeding had not occurred to him. 'Ah!' rejoined the bold vegetarian, 'I thought not. Go home and try the box.' Even thus our India quacks would have the State try the native 'box,' regardless of the consequences."

"The loss of revenue, however, is not the only disadvantage we labour under in regard to our intimate connection with the native States. There is the loss of reputation to be taken into account; a loss which although not as yet apparent in this country, has long been matter of notoriety in India, and cannot any longer be hidden ever here. It will reflect everlasting disgrace upon the British name that the most solemn engagements, the most formal treaties with many native Princes, some of whom had long proved themselves our staunch and unfailing allies, should have been utterly disregarded, and cast aside to suit the political or pecuniary purpose of the day that reputation should have been weighed in the balance against rupees, and made to kick the beam; that the good faith of a Christian country should have been thought as nothing when placed against a few hundred miles of Indian territory."

How could such a state of things end otherwise than it did, when everybody found himself being fast reduced to one common level:—Princes and Chiefs by disinheritance and annexation; Zemindars by tenant-right set up against them; Inamdars and Wattandars by resumption-Commissions; the priesthood by their temples thrown

* *The Three Presidencies of India*, by JOHN CAPPER, F.R.A.S., late editor of the *Ceylon Examiner*, 1853, pp. 270-1.

over as heirlooms to litigation, and by missionary assaults from without, and legislative blows from within, the pale of the Government? What wonder that general distrust and discontent should prevail? The greased cartridges were but the last spark There can be no doubt that dissatisfaction had spread far and wide, and whatever official reports may say, the great rebellion of 1857 was a religious-political rising commenced, by the army, but having much of the popular element in it, as the history of its rise, progress, and end conclusively shows. I tried to solve the question of the chuppatties which were said to be circulated in 1857-8. No one in these parts has been able to unravel the mystery. It is clear, however, that they were a sign of distress, which each village carried beyond its limits, lest by keeping them some calamity might befall its inhabitants. Such superstitious observances are in different forms found to prevail when pestilence or some such calamity befalls the land.

The Duke of Argyll says, "The entire armies of Bombay and of Madras escaped the plague."* Perhaps his Grace is not aware that two whole regiments, the 21st and 27th, were struck off the strength of the Bombay army as being affected with this very plague.

Again, the Duke says† that "the infection of the mutiny never reached the Presidencies of Madras or of Bombay." He is misinformed. The whole of the Southern Maratha Country was more or less disaffected. The rebellion at Nargoond and Shorapore was the direct result of refusal of leave to adopt. The confiscation of the chiefships of Sonee, Tasgaum, Kagwud, Shedbal, Chinchanee, and Nipanee, on the ground of escheat by the so-called law of lapse furnish sufficient explanation of the conflagration which only General Le Grand Jacob's popularity and ability prevented from spreading. The executions at Sattara, Kolapore, Belgaum, Kurrachee, and diverse other places, also tell the same tale. These facts are patent to the whole world. If, in spite of all that has happened, Cabinet Ministers will arise to defend a policy exploded by the unanswerable logic of facts, and disowned by the Queen's Government in 1858, then indeed our millennium is very far off.

* *India under Dalhousie and Canning*, p. 92.

† *India under Dalhousie and Canning*, p. 118.

A glorious opportunity now awaits the British Parliament to show practically that it will right the wronged. I allude to the case of the Maharajah of Mysore, which I see is to be brought before the British nation. The Maharajah's cause, or in orther words that of British faith, is warmly and judiciously advocated by five members of the Indian Council. But natives of India are grieved to see a person like Mr. Mangles employing arguments as puerile as they are unjust. Who ever heard a treaty such as that of Mysore called a "deed of gift?"* Still more strange is it to read that the words "shall be binding upon the contracting parties as long as the sun and moon shall endure, do not imply perpetuity to Indian minds. The Indian mind is shocked at such sophistry in high quarters. As to policy, I say for the safety both of India and England—for our welfare is intimately connected with that of Great Britain—that political honesty and fair dealing is the best policy. I would request members of Parliament to fling away mere "ephemeral political expediency" (to use Mr. Mangles' own expression), and look well and deeply into the past and the future. Weigh the words of Sir G. Clerk, Sir F. Currie, Mr. Eastwick, and the other dissenting members. You are now looking at the events of 1805 from the stand-point of 1866. Take note that your conduct will be watched by the people of India. Do justice even if the heavens fall. "The good of the people," which the annexationists talk of to excuse their injustice to the Princes of India, is a mere stock pretence, and this is well shown by Sir F. Currie and others. Has "the good of the people been considered when "ephemeral political expediency" pointed the other way?† and have not people been handed over bodily to alien rulers when it suited the interests of the British Government?

The Maharajah of Mysore is a Sovereign under a specific treaty. If he breaks it, let him by all means be punished *in accordnce with that treaty.* But, for the British nation to permit mere land-hunger to turn itself from the scrupulous observance of treaties, is like a decent from the spiritual to the material—a lapse from monotheism into idolatry, which must in time corrupt the governors and the governed, to the certain ruin both of India and England.

---

* *Mysore Papers*, p. 84.

† *Mysore Papers*, p. 24.

CHAPTER I.

THE LAW.

THAT noble statesman, Lord Cornwallis, in instituting the Code for Bengal, supplied the foundation for the Codes of Madras* and Bombay. Some of the characteristics of the system introduced by that statesman are thus stated by Mr. Henry St. George Tucker :†—

"*1st.*—He separated the revenue and judicial authorities, and thus "put an end to that monopoly of power, which not only leads to "abuse, but which tends at the same time to secure to it impunity.

"*2ndly.*—He established independent Courts, to whose jurisdiction "both the Government and its officers were made amenable for all "official acts."

These principles, no doubt, are the keystones of the safety and well-being of the British Empire in India. The recent Bill‡ introduced by the Hon'ble Mr. Ellis into the Council of His Excellency the Viceroy and Governor-General for ousting the jurisdiction of the constituted Courts of the land, saps, as I maintain, the foundations of this mighty national fabric; and having examined the grounds advanced by Mr. Ellis—first, on the 7th August 1873, when asking leave to introduce the Bill§; secondly, on introducing the Bill || on the 10th October 1873; and thirdly, in the 'statement of the objects and reasons' appended to the Bill¶—I must say that they are incorrect,

---

* See Minutes of Evidence taken before the Select Committee of Indian Finance, 1871 p. 61. *Question* 1160,—When the Permanent Settlement was introduced into Madras, you only copied the Bengal Regulations; the early Madras Regulations were mere transcripts from the Bengal ones?—I believe so.

† A Review of the Financial Situation of the East India Company in 1824, pages 104 and 105.

‡ Entitled the Bombay Revenue Jurisdiction Bill—(see pages 5 and 6, Appendix A.)

§ See p. 1 Appendix A.

|| Page 3, Appendix A.

¶ Page 7, Appendix A.

extremely week, and full of plausible fallacies which ought not to be urged for one moment against such a fundamental law in such a high assembly as the Council of the Viceroy for making laws. The proposed law seeks to enunciate a novel principle. It seeks to invest the Revenue Officers of Bombay with judicial functions in their own causes, and the claim of sitting in appeal on their own judgments. They can set aside law, break contracts, and laugh at the usages of the country and binding customs; and yet there shall be no redress. The Code of the great Mountstuart Elphinstone is attacked in a vital point and the incorrect (if not inverted) statement of an almost undefended case, is made the foundation for a resort to the Supreme Legislature for a new law, which will make our Revenue Officers so many Gaikawads or Moghuls, without the checks to which even these last were subject. Herein lies a great danger to our political constitution. Our landed rights are assailed; and I seek to discharge my duty as a British subject by publishing this brief and humble protest, to show that the measure now sought for is utterly indefensible; that the case assumed for its support does not exist; and that the time has now arrived for a declaratory law for the promulgation of definite rules for revenue settlements in all districts which, as yet, are unhappily without a permanent settlement, and have no binding customary law such as now exists in this Presidency.

Before describing what our law has been on this subject, I will take the liberty of submitting one or two general remarks. "Aristotle opposes the dominion of law to that of human discretion, and says that the introduction of the latter element is equivalent to the rule of a wild beast."* This I take to be the principle that has in the main guided British statesmen in their legislative measures concerning India; and, situated as we are, the government of Law is the only one that can satisfy the needs of the British Indian community. I agree with the spirit of Sir H. Maine's observations in regard to native dislike to mere discretionary government. The following observations from his Minute, dated October 1, 1868, seem pertinent†:—

---

* Vol. I., p. 27, of Sir G. Cornewall Lewis's "Treatise on the Methods of Observation and Reasoning in Politics."

† See Village Communities in the East and West, Appendix, I., p. 215.

"While I admit that the abridgment of discretion by written laws is to some extent an evil, though, under the actual circumstances of India, an inevitable evil, I do not admit the proposition which is sometimes advanced, that the natives of India dislike the abridgment of official discretion. This assertion seems to me not only unsupported by any evidence, but to be contrary to all the probabilities. It may be allowed that in some cases discretionary government is absolutely necessary; but why should a people, which measures religious zeal and personal rank and respectability, by rigid adherence to usage and custom, have a fancy for rapid changes in the actions of its governors, and prefer a regimen of discretion, sometimes coming close upon caprice, to a regimen of law? I do not profess to know the natives of this country as well as others, but if they are to be judged by their writings, they have no such preference. The educated youth of India certainly affect a dislike of many things which they do not care about and pretend to many tastes which they do not really share; but the repugnance which they invariably profess for discretionary government has always seemed to me genuinely hearty and sincere."

Our whole system is based on law, and it has been the boast of our statesmen that, in the eye of the law, the *raja* (*i.e.*, king) and the subject are equal, when a question of right has to be discussed. That has been our fundamental law. Thus, when the Bombay Regulations of 1799 were first promulgated, the following law was passed in reference to suits against Revenue Officers. Regulation III. of 1799, Section IX., ran thus*:—

"Collectors of Revenue and Customs and their assistants, and native officers, and all persons on the part of Government in the manufacture of salt, or in the provision of the investment, are declared amenable to the Judge's Court for any acts done in their official capacity, in opposition to any Regulation printed and published in the manner directed in Regulation I., 1799."

What followed may be thus stated in the words of one of our late Governors. When Sir Bartle Frere was examined by the Indian Fi-

* See Regulations passed by the Governor in Council of Bombay from the year 1799 to 1816, printed by the order of the Hon'ble the Court of Directors, page 10.

nance Committee in March 1871, he gave the following evidence in regard to the history of our land legislation†* :—

" 69. What legislation, then, has taken place affecting the assessment and condition of the land under the systems which you have described?—The first regulations on the subject were, I think, in 1798, when a very elaborate report was drawn up on the land tenures of Salsette and a few villages on the mainland, which at that time formed the whole of the Presidency of Bombay ; this report, with an indication of the course which Government meant to pursue, was declared law ; it was very much in the form of what would be a report of a Committee of Inquiry, with the Resolution of Government appended to it.

70. That constituted a complete land Code for the Presidency of Bombay as then existing ?—Yes, a complete history of the land-tax and a Code of regulations for dealing with it ; then various regulations were passed at different times, as additions were made to the Presidency by cession from the Mahrattas ; and when the whole of the Deccan was added to Bombay, with other territories of the Peishwas which were conquered in 1817 and 1818, a fresh set of the rules were drawn up by a Commission appointed by Mr. Mountstuart Elphinstone, and a very good Code of Regulations, adapted to the then customs of the country, was framed and passed into law in 1827, which made it imperative upon the fiscal officers to enquire, with regard to all questions of land assessment, into the local custom, and consecrated the custom of the country as the limit of demand. This, which might seem a very loose mode of procedure, was in fact a very considerable bridle upon the Government of the time ; and although it afterwards proved insufficient, and it was found necessary to decline and bind the Government more strictly in the matter, it was at the time a very great relief to the people, who had always the power to come in and prove that any given demand was not in accordance with ancient custom.

" 71. In point of fact every one's rights were granted to him or guaranteed to him by law, as against the Government, if he could

* See Report from the Select Committee on East Indian Finance with the proceedings of the Committee : 18th July 1871, page 6.

prove that they had existed for a time that constituted, in the opinion of the Courts of Justice, legal usage ?—Yes.

"72. And people had the right of establishing their claims in a Court of Law as against the Government freely ?—Yes.

"73. I suppose that that system has led to a good deal of accurate definition of rights and customs in the Courts of Law—Yes, and it has led to a very useful habit of looking to customs rather than to any preconceived theory."

The law which Sir Bartle Frere points to with pride, is chiefly contained in the following statutory provisions :—

Regulation IV. of 1827, *Section XXVI.*—The law to be observed in the trial of suits shall be Acts of Parliament and Regulations of Government applicable to the case; in the absence of such Acts and Regulations, the usage of the country in which the suit arose; if none such appears, the law of the defendant; and in the absence of specific law and usage, justice, equity and good conscience alone.

Regulation XVI. of 1827, *Section VI., Clause* 1*st.*—All Collectors of the revenue, their assistants and native officers, shall, with respect to acts done by them in their official capacities, be subject to the jurisdiction of the zilla Civil Courts.

Clause 2*nd.*—And the Governor in Council, when acts unauthorised by the Regulations appear to have been done wilfully, or from gross ignorance or neglect, may, in passing the Collector's accounts, check the costs and damages incurred in any suit on account of such acts.

Regulation XVII. of 1827, *Section IV., Clause* 1*st.*—When there is no right on the part of the occupant in limitation of the right of Government to assess, the assessment shall to fixed at the discretion of the Collector, subject to the control of Government.

Clause 2*nd.*—When there is a right on the part of the occupant in limitation of the right of Government, in consequence of a specific limit to assessment having been established and preserved, the assessment shall not exceed such specific limit.

Section VII., Clause 1st.—Uncultivated land not exempt from assessment may be disposed of, with the Collector's sanction, for the benefit of the revenue.

Clause 2nd.—Provided, however, that such disposal shall not in any way affect the claim to preference, the right of occupation, or any other rights which individuals may have over such land, as the same may, when contested, be established in a Court of Justice.

Section VIII., Clause 1st.—Nothing contained in the preceding sections shall be understood to affect in any way the peculiarities of the tenure of shareholders of villages settling hereditarily, and by right for the revenues of their villages in the gross, and thus possessing in some measure a proprietary right in the land of their villages; the said peculiarities shall be respected and preserved, whether they relate to the occupancy, disposal, and assessment of the lands of the village, the collection of the revenue, and the joint liability of the share-holders, or to the intermediate steps prescribed by the terms of the tenure and by local usage for the purpose of realizing the revenue in case of non-payment, without destroying the tenure.

Clause 2nd.—Provided, however, that the land and its crop shall, in these villages as well as in others, be held to be ultimately liable for the revenue; and that when the shareholders fail to pay such revenue, and the intermediate steps in such cases prescribed by the tenure and local usage have been found inefficient, it shall be competent to the Collector to manage the said villages in the same way as others, and the lands of any such villages shall then revert to the Government unaffected by the acts of the shareholders, or any of them, so far as the public revenue is concerned but without prejudice in other respects to the rights of individuals.

Section IX., Clause 1st.—The Collector's decision upon any question arising out of the provisions of the preceding sections shall, in the first instance, be obeyed and acted upon as the rule.

Clause 2nd.—But if any person should deem himself aggrieved by any such decision, he may either present to the Collector a petition

addressed to Government, praying for redress, or may file an action against the Collector in the Civil Court, under the ordinary rules, or he may pursue both methods at the same time.

Clause 3rd.—The Collector shall forward to Government, without delay, any petition presented to him under the preceding clause: but the reference to Government shall have no effect upon any suit instituted in the Civil Court."

Thus the power of the Civil Courts to do justice between the Government and its subject has been firmly established in the Bombay Presidency, and I hope to show that, as a rule, it is the same in the rest of India. But I go further and show that the powers of all the Revenue Officers have been gradually curtailed in Western India, and their judicial powers have been gradually withdrawn until 1866, when Revenue Courts were abolished by the Bombay Legislature.

This is important towards showing, as I hope to do in another place, that Mr. Ellis's arguments about the special knowledge of Revenue Officers have no foundation in fact whatever.

Regulation XVII. of 1827, Chapter VIII., Section XXXI., runs thus:—

"*Regulation XVII. of* 1827, *Section XXXI., Clause* 1*st.*—The Collector is vested with the civil cognizance in the first instance, subject to the limitation as to time, enacted in the general Regulations, of all claims for the possession of lands;

Clause 2nd.—Of all disputes in regard to the tenures of land, and to the nature and extent of the interest and advantage which should, in virtue of such tenure, be enjoyed by the parties concerned;

Clause 3rd.—Of all disputes regarding rent of the current or former year, which the ryot on the one hand, or the farmer or superior holder on the other, may desire to submit to civil adjudication as provided in Sections XXVI., XXVII., and the first clause of Section XXIX;

And regarding wells and tanks, &c.

Clause 4th.—Of all questions regarding the use of wells, tanks, and water-courses, and roads to fields;

Clause 5th.—Of all disputes regarding boundaries.

Clause 6th.—All original suits relating to any of the subjects enumerated in the preceding clauses of this section which may be depending in the Zilla Courts, will accordingly be forthwith transferred to the Collector."

And boundaries; such suits to be accordingly transferred.

This went on up to 1838; Collectors, Sub-Collectors,* and their Assistants,† and Mamletdars ‡ under references from Collectors, decided such suits; and, for the exercise of the powers thus vested in them, it was enacted that "their Kutcheries, or offices, shall be held to be Courts of Civil Judicature." §

In 1838, an Act (XVI. of 1838) was passed, by which all suits about tenures, about right to possession of land, and about district and village wattans were withdrawn from the cognizance of the Revenue Courts, and ordered to be tried thenceforward in the Courts of Adawlut. The law which effected this change runs thus:—

"*Act XVI. of* 1838, *Section I.—First.*—It is hereby enacted in modification of the rules contained in Chapter VIII. Regulation XVII. of 1827 of the Bombay Code, that in the territories subject to the Presidency of Bombay, all suits in regard to tenures, and the natures and extent of the interest and advantage which, in virtue thereof, should be enjoyed by the parties concerned, and all suits in which the right to possession of land, or of the wattans of hereditary district or village officers is claimed, shall be brought in the Courts of Adawlut and the Courts subordinate thereto, and not in the Courts of Revenue.

Transfer of jurisdiction in certain causes from Revenue to Civil Courts.

---

* Regulation V. of 1830, Section 2.

† Regulation XVI. of 1827, Section 5.

‡ Regulation VI. of 1830, Section 1.

§ Section XXXII. Clause 2, Regulation XVII. of 1827, Bombay High Court Reports, Vol. IX., P. 249.

Second.—Provided nevertheless that it shall be lawful for the Revenue Court to give immediate possession of all lands, premises, trees, crops, fisheries, and of all profits arising from the same, to any party dispossessed of the same or of the profits thereof, provided applications be made to them by such party within six months from the date of such dispossession. And, in order to the due execution of such power, it shall be lawful for the Revenue Courts to determine the facts of such possession and dispossession; and the party to whom the Revenue Courts shall so give immediate possession, shall continue in possession until ejected by a decree of a Court of Adawlut.

Summary jurisdiction of Revenue Courts in giving possession.

Third.—Provided also that nothing contained in this Act shall be held to interfere with the jurisdiction defined in Clauses Third, Fourth, and Fifth of Section XXXI., Regulation XVII. of 1827 of the aforesaid Code, which shall continue to be exercised by the Revenue Courts.

Restriction of this Act.

The Sections 3 to 5 provided for the reference of suits to the proper Courts, doubtful cases of jurisdiction being referred for decision to the Sudder Court. Judges and Collectors were directed to transfer suits improperly received to the proper Courts under the guidance of the Sudder and the last section laid this down as the law for sending cases :—

"VI.—And it is hereby enacted that all original suits and appeals relating to any of the subjects enumerated in Clause First Section I, of this Act, which may be depending in the Revenue Courts, shall be forthwith transferred to the Courts of Adawlut; and in all cases where the right of appeal may now be open, the appeal shall be brought to the Court to which, under the rules of this Act such appeal shall lie."

This went on till the year 1865, when, on the 2nd August 1865, the Honourable Mr. Ellis moved the first reading of the Bill "to divest Courts of Revenue of jurisdiction in certain cases, and to vest such

jurisdiction in the Courts of Civil Justice in the Bombay Presidency."*

On this occasion, Mr. Ellis's speech is thus reported :—"The Hon'ble Mr. Ellis in moving the first reading of the Bill 'to divest Courts of Revenue of jurisdiction in certain cases, and to vest such jurisdiction in the Courts of Civil Judicature in the Bombay Presidency,' said, that when the judicial Courts were first established, it was supposed that Revenue Officers would be better able to dispose of the class of cases described in Chapter VIII. of Regulation XVII. of 1827 than the Civil Courts. It was felt that the latter Courts, from their want of local knowledge, would not be able to extend that protection to the cultivating classes of which the latter, from their ignorance, stood in special need. The ryots, however, were now much improved in their social position, and were quite able to take care of their own rights. The character of the Civil Courts had also been raised; and it was the general opinion that they could be safely invested with jurisdiction in cases between the ryots and superior holder. The present Bill would not affect Bombay Act V. of 1864, nor the Survey and Settlement Act."†

Mr. Ellis moves the first reading of the Revenue Courts Bill.

The Bombay Act V. of 1864, which is above referred to is one which empowers Mamletdars to try summary suits for possession.‡ Except this, there is jurisdiction left to Revenue Officers in matters of title. The above Bill, introduced in 1865, became law in 1866, and the chief provisions of it are these :—

See Proceedings of the Council of the Governor of Bombay for making Laws and Regulations, 1865, Vol. IV., p. 124.

† See Proceedings of the Council of the Governor of Bombay for making Laws and Regulations, Vol. IV., pages 124, 125.

‡ *Bombay Act V. of* 1864, *Section I.*—It shall be lawful for the Mamletdars' Courts in the Bombay Presidency to give immediate possession, under Section I, Clause 2nd of Act XVI. of 1838, of all lands, premises, trees, crops, fisheries, and of all profits arising from the same, to any party dispossessed of the same, or of the profits thereof, otherwise than by due course of law, provided application be made to them by such party within six months from the date of such dispossession ; and it shall also be lawful for such Courts, in cases in which a disturbance of the possession of lands, premises, trees, crops, or fisheries is attempted by any party, to issue an injunction to such party to refrain from disturbing the possession of the party who is in possession.

"Bombay Act No. II. of 1866."

(*Promulgated 26th February* 1866.)

An Act to divest Courts of Revenue of jurisdiction in certain cases and to vest such jurisdiction in the Courts of Civil Justice in the Bombay Presidency.

Preamble.

Whereas it is expedient to divest the Courts of Revenue in the Bombay Presidency of jurisdiction in cases relating to the rent of land, and the use of wells, tanks, and water-courses, and roads to fields, and to vest such jurisdiction in the Courts of Civil Judicature in the said Presidency; It is enacted as follows:—

Laws repealed.

1. So much of Chapter VIII. of Regulation XVII. of 1827 as is still in operation, the fifth clause of Section 2 of Regulation V. of 1830, Regulation VI. 1830, and the third clause of Section I of Act XVI. of 1838 are hereby repealed, except in so far as they repeal the whole or any part of any other Regulation or Act.

The Civil Courts vested with jurisdiction in certain cases.

2. Except as herein otherwise provided, the Civil Courts, according to their respective jurisdictions, are hereby invested with the cognizance.—

1. Of all disputes regarding rent of the current or former year which the ryot on the one hand, or the farmer or superior holder on the other, may desire to submit to adjudication; and

2. Of all questions regarding the use of wells, tanks, and water-courses, and roads to fields."

Disputed village boundaries alone are settled by the Survey Department under Act I. of 1865,* as they used to be before under

* Bombay Act I. of 1865, Sections 16—29.

Regulation X.* of 1827 by means of a Commission. But when that operation is once performed, questions of encroachment on lands so defined are decided by Civil Courts.†

The Legislature has therefore distinctly acknowledged the progressive improvement of our Civil Courts; it has held that the civil jurisdiction of Revenue Officers was a matter of mere expediency, and in its nature exceptional; it has gradually reduced that exceptional jurisdiction, and has at last abolished it in 1866 completely, and invested the Civil Courts exclusively with the cognizance of all civil suits. Even in the matters of summary suits for possession, it has been held that Civil Courts have co-ordinate jurisdiction‡; so that a man may now go either before a Subordinate Judge or a Mamletdar, as he likes.

All the above Acts are applicable to the whole Presidency of Bombay, subordinate to the High Court. Sindh is a recent acquisition, and has a system of its own.

There is one more law which I must notice before I close this portion of my remarks. And this for two reasons—first, because it shows clearly how the Legislature has carefully guarded the landed interests of Her Majesty's subjects by providing for the cognizance of revenue questions by the Civil Courts; and secondly, because it shows the remarkable change that has come over Mr. Ellis's views in these matters. The law I allude to is the City Survey Act No. IV. of 1868. This was introduced by the Hon'ble Mr. Ellis himself in 1868, was passed at the end of that year, and received the Viceroy's assent on the 12th January 1869. It is a supplement to the Bombay Survey Act. The reason of this remark will be seen further on. In his observations on this Bill when it was before the Legislative Council, Mr. Ellis made the following remarks:—

"There was one other point of considerable importance to which he would refer. It was supposed that the Bill was devised with one principal object—that of depriving people of a remedy in the Civil Courts in respect to land of which they might be deprived by the

* Harrison's Code, p. 239.
† 6 Bombay H. C. Reports, p. 72—*Bapuji Bulwant* vs. *Raghunath Vithul.*
‡ *Ex-parte Angava Kom Jokan Gauda,* 3 Bombay H. C. Reports, p. 108.

Collector, or of damage for wrong which they might suffer by his decisions. The fact was that the only cases in which, under the draft Bill, remedy under the jurisdiction of the Civil Courts would have been barred, were those occurring under Acts II. and VII. of 1863—a very limited class of cases. But for all decisions under Act I. of 1865, and for all the new provisions of this draft Bill, no such provision was proposed; on the contrary, the sections of Acts II. and VII. which gave such power had been expressly omitted; for Section XIII. and XXVIII. of those Acts respectively, which prevented the Civil Courts from questioning the Collector's decisions, were not contained in Section XIV. of the draft Bill. That section merely provided that officers of Government should not be liable to be sued for actions done under this Bill *bona fide* in the discharge of their duty: but there was nothing to prevent any officer from being sued for misconduct, or for acts caused from gross negligence on his part. That was to say, if the Collector were to do something which was grossly and obviously wrong, he would not be protected by pleading that he had acted *bona fide*: nor on the other hand, would there be anything to prevent an aggrieved individual from taking proceedings against Government on account of any wrong or damages that he had been subjected to by an officer of Government. But in order to do away with the objection, the Select Committee had removed that provision in the original Bill. There was therefore no provision in the Bill, as presented now, which could prevent the Civil Courts from taking cognizance of the acts of the Collector in respect to the title to any town or city lands."

Readers will now have some idea of the revenue jurisdiction question as it stands up to this day. How our whole fabric is now proposed to be disturbed will be discussed in the next chapter. Before concluding, however, I shall quote some more observations in point from the evidence of Sir B. Frere before the Indian Finance Committee in 1871:—

"383. But interposing between the Collectors of the revenue and the village head-men, there are some subordinate officers; are

* See pp. 23 and 24, Vol. VII. of the Proceedings of the Council of the Governor of Bombay for making Laws and Regulations, 1868.

there not ?—Yes, there are district officers; they are generally called Mamletdars; they have about the same authority in revenue matters as a Tehsildar.

" 384. Have these district officers the power of hearing summary suits for arrears of rent ?—No, they have no civil judicial powers, they have criminal judicial powers.

" 385. They are revenue officers only for the purpose of receiving and remitting the revenue ?—Yes. All questions of right go to the Civil Court.

" 386. Even summary suits for arrears of rent ?—Yes.

" 387. [*Chairman.*]—If the claim gives rise to any question of right as against the revenue officers, then it is taken to the Civil Court ?—Yes.

" 388. But if it is an uncontested question of revenue, then it is enforced by the revenue officer ?—Yes.

389. Unless the occupier or alleged owner raises a question of right as against the Government ?—Yes."

I trust this will always be the case now and hereafter.

CHAPTER II.

PLEAS FOR THE CHANGE EXAMINED.

Having endeavoured to explain the present state of the law in regard to the liability of the Bombay Revenue Officers to be sued in the Civil Courts for a breach of the law in their official acts, I now propose to review briefly the provisions of the new Bill brought forward by the Hon'ble Mr. Ellis, and the arguments by which it is supported. Mr. Ellis says that there are two points involved in this Bill. The first and minor point concerns the accidental repeal of the provisions of Section 13 of Regulation XVII. of 1827, on the occasion of the passing of the Land Improvement Act (XXVI. of 1871) of 1871, in regard to the recovery of arrears of land-revenue. This can be no reason for the present Act as it stands. For, there are many examples of Indian Statutes especially of late years, passed for correcting errors more trifling than this: so that a short Act to rectify this legislative slip would be quite fair. Nobody would have much to say against it. But in the second point lies the sting of the present Bill, and this on grounds which appear to be altogether one-sided, and to a great extent assumed without any foundation whatever. Mr. Ellis's Bill would "restrict," or rather exclude, the jurisdiction of the Civil Courts because of the following circumstances, which I must state in his own words:—

"The necessity for the restriction arose in this way. Recently, several suits had been brought into the Civil Courts impugning the validity of assessments made by the Survey and Settlement Officers and confirmed by the Government. These suits had gone so far as to bring in question the amount of assessment, and the mode of making the assessment. Mr. Ellis would give a notable instance which had occurred quite recently. A land-holder objected to an assessment of Rs. 4, placed upon his field by the Settlement Officers. This case was, on appeal, finally decided by the High Court in favour of the plaintiff, and it was ruled that the assessment of the

officers of the survey could not be maintained, because it contravened a local rule of the survey that not more than one-sixth of the gross proceeds should be imposed as the assessment on any field."*

Now, I must here distinctly state that this is one of the worst instances that we have lately seen in such high quarters of a complete *petitio principii*, if not also of downright misrepresentation. Suits in regard to assessments, and in revenue matters generally, are as old as the very first years after the cession and conquests from the Peishwa; and the case of the Joshis against the Collector of Ratnagiri, decided at Surat on the 6th May 1826, shows that landed rights were inquired into and redressed as directed by the oldest Regulations. I append below a list of suits filed in the Tanna District Court against Government since the year 1864, distinguishing, as far as possible, survey suits from other causes :—

Years	Against Collectors, Survey Officers, and Mamletdars.	Against other Officers.	Total.
1865.....	26	4	30
1866.....	18	14	32
1867.....	28	9	37
1868.....	92	5	97
1869.....	46	28	74
1870.....	33	6	39
1871.....	36	6	42
1872.....	24	9	33

The above refers to the district of Tanna, and shows that it is not a new thing to sue a Revenue Officer for an infraction of the law but that it is a part and parcel of the fundamental law of this Presidency. So much for the word "recently." Now about the validity of assessments. Colonel Francis has deposed in a pretty old case that he has assessed lands to the amount of one-fifth or one-sixth of the gross produce. This naturally has led the people to suppose

* This suit was commenced in 1868, and, after a "consent" decree was passed against the Collector, this Bill is now being pushd on.

that what he stated on oath must have been under one of the rules of the department framed in pursuance of Section 25 of Bombay Act I. of 1865, under which he is presumed to be working. I mention this in answer to Mr. Ellis's statement that there is at present no general or local rule in regard to assessments in this Presidency. I regret that this should be so ; but if that is the case, it at once accounts for the grave mistakes which are being constantly made in the operations of this department. It shows that a system under which rice-lands at Bassein are assessed at Rs. 6 an acre, within a distance of thirty-two miles by railway from Bombay, and a twelve hours' journey by water, and lands in Khed Pettah in the Ratnagiri Collectorate at a distance of more than a hundred and twenty miles from the Presidency, and shut out from intercommunication with it nearly five months in the year, at Rs. 9 to Rs. 10 an acre, and garden-lands in Bassein and the Dapuli Taluka in nearly the same position as Khed, at Rs. 8 and Rs. 15 an acre respectively, cannot be a system founded on law and sound discretion. I could quote worse examples ; but I refrain. If a perpetuation of error and consequent injustice be the object in view nothing would suit the purpose better than a Bill like the present ; but such, I trust, may not be the case, having regard alike to the well-being of the subject and the safety of the State. The four-rupee suit, which is made the apparent foundation of this Bill, was decided by the High Court according to law, and in the entire absence of evidence on the part of the defendant-Collector to show what the usage or custom of his department was. The decree was passed by the consent of the Legal Remembrancer, who represented the Government in the cause. The judgment itself has been published in more than one paper, and I do not therefore reproduce it here. It will be observed that the High Court have decreed the amount which was *admitted* to be the correct one by the Collector.

If this is *the* "notable" instance (and I take it to be so from Mr. Ellis's own testimony), those who have set the present Bill in motion have indeed a very weak case. I have enquired into the registers of three districts where the survey has been lately going on

and, so far as I know, there is no other case simply regarding the amount of assessment which has been brought before the High Court. Instead of therefore trying to shut the mouths of the people and stifle their cries for justice, the better policy, in my humble opinion, would have been to frame just and proper rules for the guidance of the survey—not according to mere preconceived theories, as was well observed by Sir Bartle Frere before the Finance Committee* in 1871, but according to the established usages and customs of the country, and the recorded rules and practices of the present and previous Governments. Instead of so doing, the survey Officers break law and contracts; and, when sued, the Collectors generally conduct Govern. ment suits in the following manner, as well described by the Hon'ble Mr. Justice Melvill:—

"The mode of defence is almost invariably as follows:—A suit being brought against a Collector on account of some revenue exaction, or some payment withheld, the Collector puts in a written statement in which he commences by pleading the Statute of Limitations, whether or not there is the smallest ground for such a plea. He then proceeds to say that the suit in barred by Act XVIII. of 1850, which is an Act for the greater protection of Magistrates and others acting judicially. Then follows a justification of the act complained of, by a reference to certain sections of Regulations and Acts which as often as not, have nothing to do with the matter in question. After the settlement of issues, the Collector obtains as many adjournments as the Court is disposed to grant; and finally, having put in little or no evidence, he leaves the Court to arrive at the best decision it can, with the aid of such books of reference as the Judge can lay his hands on and such knowledge of the details of revenue administration as he may have acquired in the course of his own service as a Revenue Officer.

"In the present case we have the usual plea of limitation, for which there is rather better ground than there ordinarily is; the plea of protection by Act XVIII of 1850, which is simply absurd, and

* Page 22. Minutes of Evidence taken before the Select Committee o Indian Finance, 1871.

has of course been abandoned ; a justification of the act complained of, by a reference to Section 4 of Act XI of 1843, which is so utterly inapplicable that the learned Legal Remembrancer supposes it to have been quoted by mistake ; and the usual omission to put in any evidence which could in any way assist the Court in arriving at a decision."*

As Mr. Nairne has well observed,† this is a style of defence which requires to be remedied, and it is to effect this that the efforts of the Government of Bombay ought to be directed, rather than to seek the enactment of such reactionary measures as the one now proposed.

Mr. Ellis says further on—"Such was the effect in this particular suit." I am really at a loss to understand the drift of this remark. The effect of a consent decree is, I take it, simply that the decree has been passed, and that what has been consented to, has been decreed. Mr. Ellis might as well enact that because C, an arbitrator appointed by A and B, has decided that A owes fifty rupees to B, therefore the institution of arbitration is a usurpation of the mighty functions of the Government, and ought to be abolished by law. The High Court have indeed displayed more than the usual caution (if I might venture on any remark) in not going beyond the four corners of the particular case as placed before them ; and it seems to me, therefore, that all the high-talk about the "modes of assessment," and "the principles of assessment," and "broad political questions," and "matters of State policy," might well have been spared until the occasion arose. When the High Court over-rules the law—which I understand to be "the deliberate decision" of the State in India as well as in England—then would be the time to ask for a law to muzzle the judicial discretion of their Lordships. I have no doubt that tribunal is well able to take care of its own dignity and jurisdiction. My concern is as a member of the community, who sees that we are being deprived of one of our great

* See Bombay High Court Reports, Vol. VIII., pp. 108, 109.

† See Revenue Hand-Book by A. K. Nairne, Esq., Bom. C. S. ,p 461.

constitutional privileges under the cover of a case which does not exist. If the Survey and Settlement Department is so incompetent that it must break the law at every step, and trample upon people's rights it is better that a higher class of men should be drafted into that department, rather than that the rights of Her Majesty's subjects should be sacrificed wholesale, and all the avenues of redress closed by the Legislature. One example of the results of what mischief can be done by officers specially trained, as Mr. Ellis is pleased to call them, may be gathered from the reports of the Revenue Commissioner, Southern Division, Mr. Havelock, particularly one dated the 28th April 1873, which will show that, after an expenditure of lakhs and lakhs of public money, the whole scheme of the Ratnagiri Revenue Survey* has completely failed. The remedy which the Bombay Government has sought in that case is one of the legitimate means by which such great wrongs can, to a certain extent, be redressed; but I never yet heard of a statesman proposing to promote good-feeling between the governors and the governed by gagging the mouths of the latter. The proceeding seems to be on a par with the proceedings of some hakeems who would shut up a phthisical patient in a dark, confined room, lest the oxygen of the free atmosphere outside should promote the activity of his lungs, and thus impair their supposed harmony with the general debility of the patient's constitution. A moment's reflection will show that the physical phenomenon of death must follow in the one case, as the political annihilation of a whole people's public life must follow in the present. No example occurs in history ancient or modern, European or Asiatic, of such a remedy for promoting good-feeling as the one now proposed. The next reason is one which goes further. It is that the jurisdiction of the Bombay Civil Courts, as far as the hon'ble member was aware, went much further than in any other province of India. Is this, I ask, a sound reason in itself for the repeal of a law which has worked well for nearly seventy-five years—a law which has trained the people of Western India to appreciate the British system of fair-play, and which has enabled them to stand the fiery ordeal of those troublous times which are still fresh in the memory of all? Will the Govern-

* 4. See some of the extracts in Selections from the Records of the Bombay Government, No. CXXXIV.—New Series pp 106—109.

ment make light of this spirit of firm reliance on British justice for no reasons whatever, so far as the public has yet seen them ?

How is the intent of a law to be determined ?* In doing this, three things are to be borne in mind—1, the old law ; 2, the mischief 3, the remedy. What, then, is the mischief of the present law ? The case cited by Mr. Ellis has no existence. The alleged apprehended danger is merely a gratuitous assumption, and an undeserved censure on the constituted judicial tribunals of the country, whose decisions have, on the whole, given satisfaction to the public, and have broken through no principles or laws, as the Hon'ble Mr. Ellis would evidently suggest. Having said so much on the general principle, I now ask, is it the fact that in no other province of India is the law the same or similar to that which obtains in this Presidency ? I am at a great disadvantage in discussing these questions at such short notice with the Second Member of the Viceroy's Executive Council, because the resources at my command are naturally more limited. But I shall endeavour to do my best.† Mr. Ellis must be aware that the revenue systems of all the provinces and administrations of India are not alike. Bengal is happy in the great settlement of Lord Cornwallis. Portions of Madras enjoy the same, inestimable boon. Of the remainder of that province, to use the words of the Madras Board of Revenue, "the bulk of the people are paupers. They can just pay their cess in a good year, and fail

* See Vatel's Law of Nations by Chitty, Ed. of 1834, pp. 255—257 Book II., Chap. XVII.; Dwarris, p. 693; Sir George Cornewall Lewis on the Methods of Observation and Reasoning in Politics, Vol. I., p. 456.

† Mr. Ellis has cited no provision of law or texts. We have at present only his assertions, and reference to a solitary Act of 1871, relating to the Punjab, which I shall notice further on. Unless there is a positive law to the contrary (see Section I. of Act VIII. of 1859), all matters of a civil nature can be brought before the Civil Courts. No such laws have been cited by Mr. Ellis; and some idea of the labour of tracing such laws for all the Presidencies can be formed by referring to the Prefaces to Mr. Justice West's Code for Bombay; and to Mr. Field's Chronological Table of the Statute Law of all India; and to Mr. Marshman's evidence, in reference to the Statutory Law of Bengal, before the Parliamentary Committee of 1852-53.

altogether when the season is bad ; remissions have to be made perhaps every third year in most districts."* The reason of this I take to be that Madras has been deprived, at least in some of its districts, of a Ryotwarri perpetual settlement, finally and unalterably fixed, as contemplated by Sir Thomas Munro.† Of the N. W. Provinces, Benares enjoys a Permanent Settlement also. But the other provinces have lost the same boon which had been promised to them by the Indian authorities.‡ In regard to Orissa, Regulation VII. of 1822, which is likewise applicable to Bengal, appears to provide a system which respects the proprietary interests of the people in the soil, and yet the Civil Courts are empowered to take cognizance of revenue questions likewise.§ The Punjab, to which the hon'ble member has referred at a late stage of the case, is one of the latest British acquisitions. The history of its Courts has always been very obscure, and the best exposition that I can discover in regard to the constitution of its judicature is from a minute by the Chief Court on the Bill to define and amend the law relating to the tenancy of land in the Punjab.‖ Its land law is discussed in the same compilation, and, instead of being defined and settled from time immemorial as in Western India, it is still, in the very first stages of formation,—in a sort of nascent state. One of its Lieutenant-Governors, Sir Robert Montgomery, in his examination before the Indian Finance Committee in 1871, states as follows¶ :—

---

* Selections from the Revenue Records of the N. W. Provinces, A. D. 1822—1833, Preface, p. XVI. See also "A series of Essays on Systems of Land Tenure" published under the sanction of the Cobden Club, 2nd Ed., pp. 204—206.

† See Gleig's Life of Sir Thomas Munro, Vol. III. pp. 418, 419.

‡ See "A review of the Financial Situation of the E. I. Company in 1824" by Henry St. George Tucker, Esq., particularly pp. 97 to 132.

§ See Toynbee's Sketch of the History of Orissa from 1803 to 1828, especially appendix, p. ccxii.

‖ See pages 231—238 of the Parliamentary Blue Book on the Punjab Tenancy Act, 6th April 1870.

¶ Minutes of Evidence, pages 52 and 53, Report E. I. Finance Committee, 1871.

"*Question* 964. [Mr. Eastwick.]—I think you said nothing about the Trans-Indus district; do we get anything from that?—That is the most western portion of the Punjab. As regards the general feature of the country, a portion of it is very well watered from the hills, but a great deal of it is very arid. The inhabitants are very warlike; they have never paid a great deal of revenue, and our assessment is very much lighter there in consideration of the people, and their habits, and their want of skill perhaps in cultivation; and, politically, it is of importance not to assess them highly.

968. You say that the assessment is lighter; can you say exactly what it is? No, I cannot say exactly but it is considerably lighter. It is politically of importance more lightly to assess those people, seeing that they are quite different in character; and, in some parts of the country, they are almost independent of us; our assessment is almost a pepper-corn.

969. But it is fertile soil, and if they become quite peaceful it will produce more revenue?—Yes."

Some portions of that country are therefore hardly amenable to any law whatever, and may require to be exceptionally treated, like other portions of the British Empire in Asia or other parts of the world.

Again, even the system of Courts is different, to a certain extent, in different parts of India.* The discussions on the Bengal Courts' Act would show that there were several differences which existed between the constitutions of Courts of the different Presidencies themselves, and that even Mr. Fitz-James Stephen pronounced the project of a general Civil Courts' Bill for India as "too ambitious." Where the people are most advanced, as in Bengal and

* Bengal—Act VIII. of 1869, Act VI. of 1871; Punjab—Act XIX. of 1865, Act IV. of 1866, Act VII. of 1868; Madras—Act III. of 1873; and more than 25 other Acts cited by Mr. Field.

See pp. 223—229 of Supplement to the *Gazette of India* of 1871, February 18th No. 7.

Bombay, its leading features are nearly the same. But even if there were a more developed constitutional system in Bombay than in Bengal (which is not the case), it is no reason whatever for relegating us to the state of the barbarous savages on the Punjab Frontier, two hundred years behind the advanced nations of the world.

Again, as a matter of fact, the repressive system which Mr. Ellis would wish to introduce into Bombay is not the law for the rest of India.

Thus in regard to Bengal, we have the following evidence given before the Select Committee of the House of Commons on Indian territories by Mr. (afterwards Sir) F. J. Halliday (now one of the Members of the Indian Council) in March 1853*:—

"2084. [*Mr. Mangles.*]—Will you be so good as to describe to the Committee what is the state of the law under the Company's Regulations, as regards matters of litigation, between the Government and individuals under the laws of Lord Cornwallis?—The law of the Government at present, as regards disputes between the Government and individuals, is exactly the same as the law respecting disputes between man and man. The Government places itself in the position of an individual in all litigation with its subjects.

2085. There is no exception to that?—There is no exception or distinction whatever.

2086. The Government may be prosecuted on any matter of land revenue or customs revenue, and may be made to pay costs and damages just as an individual may?:—Yes, quite so; so much so that the system was objected to by a very eminent member of the Government, afterwards Lord Metcalfe, as placing the Government prostrate at the foot of the Civil Courts; but I believe nobody agreed with him that it was objectionable, though they admitted the fact.

* See p. 164 of the First Report, 1853.

Again the evidence of Mr Neil B. E. Baillie, Government Pleader in Bengal, and a distinguished writer on Muhammadan Law, before that Committee is to the same effect:—

"3472. [*Mr. Mangles.*]—Has not the law of Lord Cornwallis placed the Government upon a footing of perfect equality with its subjects in all matters of litigation whatever?—I think it has.

3473. As you have been the pleader of the Government in the Sudder Court, and has been cognizant of many of the cases brought by appeal from the lower Courts, under such circumstances will you state whether you believe that the native subjects of the Government obtain full and substantial justice in all matters of dispute concerning revenue, whether land or salt revenue, or otherwise?—Certainly: I never saw anything like partiality in favour of the Government; I should rather say the feeling was frequently against the Government. I do not think it existed much during the time I had the charge of the Government cases, for there were very few failures; but I have heard it said that there were some Judges who always decided against the Government. Whether there was any truth in that statement or not, I cannot say. During my time the Government was successful in a very large proportion of the cases which came into the Courts.

3474. Is not there another safeguard: is not the Collector, before he brings an action on the part of the Government against any individual, and before he defends a suit brought by any individual against the Government, obliged to apply to the Commissioner or to the Board of Revenue for permission to bring or defend such an action?—Yes, that is the practice.

3475. All cases which are not clearly such as the Government ought to bring or to defend, are given up by the superior revenue authorities?—I think it must be so, and to that I would ascribe, more than to any other cause, the almost uniform success which attended the Government cases when I had them. At one time I made a calculation, and only about seven per cent of the Government cases failed.

3476. Is not that a very honorable peculiarity of the law of India as compared with the law of England?—I think it is; there was complete impartiality certainly in the Sudder Dewanny Adawlut and the Courts subjected to it, so far as the Government were concerned.

3477. Are you aware that in this country the Crown has great privileges in that respect?—Yes, I believe they are to be abolished; but the Crown has the privilege of not paying costs."*

Again, Regulation III. of 1794, Section XII.; Regulation V. of 1800, Section XXIII.; and Regulation XVII. of 1803, Section XV. show that the Civil Courts will inquire into any exactions of sums from proprietors or farmers of land beyond the latters' engagement. In noticing this, Principal Boutros of the Delhi College, in his Treatise on the Principles of Public Revenue, with a short Abstract of the Revenue Laws in the Bengal Presidency (p.45, note), observes as follows:—

"A Judge is not *legally* answerable for an erroneous decision because, not being interested in the case, his error is held to be nothing but the natural result of human fallibility. He is, however, *morally* responsible in all cases where his error arose from want of care in sifting the evidence, or from ignorance of the law or from any other similar cause. If a wrong decision be proved to have been given from dishonest motives, the Judge is of course legally responsible.

"The same principle applies to a Collector acting in his judicial capacity, that is, trying a summary suit, a boundary dispute, &c. But where the Collector, instead of being a *disinterested* judge in the case, is, as the representative or agent of Government, an *interested* party, he is subject to the law of the land like a private individual."

Other matters on which Collectors' decisions can be brought into the Civil Courts, or the Collectors themselves can be sued in the

* See First Report, 1853, pp. 336, 337.

Civil Courts, in respect of revenue matters, can be seen at pages 43, 44, 53, 65, 71, 73, and 74 of the same work. One passage is so characteristic, and bears so directly on the present question, that I must give it entire :—

Charges against Collectors.

"Some of the following rules might at first appear singular to native readers, as they suppose that suits in which the Government is a party, that is, in which an individual complains of some injury done him by the Government, may be tried by Courts in which officers of that very Government preside. One might well feel disposed to doubt that officers so situated would be impartial judges ; but, in fact, both theory and experience show that Anglo-Indian Judges, high and low, can act with independence even when opposed to the revenue authorities. The Supreme Council enacts laws for the collection of revenue, and a certain class of officers is appointed to carry those laws into execution, but at the same time to another class of officers is committed the charge of preventing or punishing any breach of those laws, even when its object is the interest of the public revenue. The Government do not wish that their Revenue Officers, in the fervour of their zeal, should ever go beyond the laws enacted for their guidance ; and if they do so, and the fact be properly established in a Court of Justice, the supreme authority stands a silent and impartial spectator of the trial, even when the Civil Court orders a refund of some thousands of rupees from the public treasury, where they are found to have been illegally entered. The general impartiality of the Civil Courts is duly appreciated by the people, as clearly appears from the number of suits of this kind filed in those Courts."

The Digest of Bengal Regulations by James Edwards Colebrooke, Esq., Vol. I., Title, Revenue Department, pages 27—31, and Title, Actions, pages 34—44, supplies examples of a variety of revenue questions being taken to the Civil Courts for adjudication. This is an old work certainly ; but many of the laws therein set forth are to be found in Sutherland's Digest, entitled "The Regulations of the Bengal Code in force in September 1862," and even the last re-

pealing Act XII. of 1873 leaves many of them untouched. When the promised revised edition of Mr. Field is published, we shall be in a better position to judge with accuracy whether some of these questions have now been removed from the domain of the jurisdiction of Civil Courts.

Turning to Madras, I would cite the following provisions to show that not only land-revenue suits are specially provided for, but suits in regard to Inams enfranchised, or, as we should say in this Presidency, summarily settled, are distinctly contemplated by law* :—

"*Madras Regulation XXV. of 1802, Section* 3.—Where the conditions of the permanent assessment of the revenue may have been adjusted, a sunnud-i-milkeut istimrar, or deed of permanent property, shall be granted on the part of the British Government to all persons being, or constituted to be, zemindars or proprietors of land; and each zemindar or proprietor of land shall execute and deliver to the Collector of the district a correspondent cabooleat. The said sunnuds and cabooleat shall contain the conditions and articles of tenure by which the lands shall be held. In all cases of disputed assessment, reference shall be had to the sunnuds and cabooleats, and judgment shall be given by the Courts of Judicature in conformity to the conditions under which the agreement may have been formed in each particular case."

"MADRAS ACT No. IV. OF 1862.

An Act to exempt enfranchised Inams from the operation of Regulation IV. of 1831, *and Acts XXXI. of* 1836 *and XXIII. of* 1838.

Whereas, by Regulation IV. of 1831 of the Madras Code, and Acts XXXI. of 1836 and XXIII. of 1838, all hereditary and personal grants of land-revenue in this Presidency are removed from the cognizance and process of the Courts of Civil Jurisdiction, and the power of deciding on claims to these tenures is reserved to the Govern-

* See also Regulation XXXI, of 1802, Madras Code.

ment; and whereas, under the inam rules sanctioned by Government, under date the 9th August 1859, the reversionary rights of Government are surrendered to the inamdars, in consideration of an equivalent annual quit-rent, and the inam lands are thus enfranchised, and placed in the same position as other descriptions of landed property, in regard to their future succession and transmission; It is hereby enacted as follows:—

1. All inams of the classes described in Clause 1, Section 2 Regulation IV. of 1831, which have been, or shall be, enfranchised by the Inam Commissioner, and converted into freeholds in perpetuity, or into absolute freeholds in perpetuity, shall be exempted from the operation of Regulation IV. of 1831, and of Acts XXXI. of 1836 and XXIII. of 1838 of the Madras Code.

2. The title-deed issued by the Inam Commissioner, or an authenticated extract from the register of the Commissioner or Collector, shall be deemed sufficient proof of the enfranchisement of land previously held on inam tenure."

The second of the above extracts will be useful to show that as a matter of fact, even in regard to inams, as soon as the summary enquiry is over, and the inamdar's title adjudicated upon, the jurisdiction of the Civil Courts is completely restored. The same, I apprehend, holds good in regard even to the new districts of the Bombay Presidency, to the level of which, on the alleged plea of uniformity, the present Bill would seek to reduce the much more important older districts, extending from the northernmost point of Guzerat to the frontier of the Madras Presidency. That the operation of the Summary Settlement Acts II. and VII. of 1863 ceases after the exceptional purpose of those Acts has been effected, has been recently decided in special appeal No. 4 of 1873, in a suit by Shri Umabai Maharaj against the Collector of Poona, by their Lordships, Justices West and Nanabhai. In this case, the Collector was charged with having invaded the rights of the inamdar, who had a grant by Sir Thomas Munro in 1818, confirmed by the Hon'ble Mount-stuart Elphinstone, of the village of Kerur in the Southern Mahratta Country, and which was subsequently exchanged for the village of Wadgaum in the Poona

district. The Inam Commissioner had adjudicated upon the title of the inamdar under Act XI. of 1852, and it was argued for the defendant Collector that this matter could not now be inquired into by the Civil Court, although the complaint was that the Collector had in effect upset the decision of the Inam Commissioner. The judgment of their Lordships on this point runs as follows :—

"An argument was raised against the jurisdiction of the Civil Courts in this case on the provision of Regulation XXIX. of 1827, which excludes from their cognizance all claims against Government on account of inams. By taking the land in this case, and by defending the action, Government, it was urged, has pronounced that so much of the pretended inam as it has appropriated is not really inam property, and its action cannot be reviewed by the Civil Courts. But the intention of the Regulation was not to exclude inamdars' claims from all adjudication whatever. Chapter X. of Regulation XVII. of 1827 made provision for the trial of such claims by the Collector, before whom the claimant in each case had a right to appear and sustain his cause. It was the right of appeal to the Zilla Court under Section 49, and that only which was withdrawn by Regulation XXIX. of 1827. Act XI. of 1852 replaced the Collector by the Inam Commissioner—the advantage of an open enquiry, and the liberty of refuting the evidence that told against him, were withdrawn from the claimant. He had to abide by such an adjudication as the intelligence of the Commissioner, unaided by argument, might enable him to pronounce by such an execution of the decree as the Government might prescribe. But the new law having been once thus carried out the Government was *functus officio*. The law solemnly enacted was meant to have effect as law; and when Government, in its legislative capacity, constituted the inam tribunal, and declared its decrees final, except when and as modified in appeal under the Act, it submitted itself in its executive capacity to the decisions of that tribunal. If indeed it were at liberty to treat the decision of the Inam Commissioner as binding on the inamdar, but not on itself, the whole proceeding would be no more than a cruel mockery. The unfettered discretion which Mr. Dhirajlal claims for the Executive under the Act, could equally and less invidiously have been exercised without

it. The claim to an inam has in this case been actually adjudicated on. The land has been constituted 'private property;' and for the Collector's invasion of this 'private property,' the Civil Courts must provide a remedy, as in the case of any other trespass. The Government indeed must not be considered in a matter of this kind as identifying itself with the Executive officer who does a wrong, rather than with the tribunal which tries the complaint of the person injured. By expressly subjecting Collectors to the Civil Courts for official acts (Regulation XVI., Section 6, of 1827), it identifies itself, for the announcement of its higher will, with the Courts, not with the Executive officers, and thus the Collector whom the Courts find to be a trespasser must be deemed not only to have infringed some abstract law, but to have disobeyed the commands of Government in its legislative and all-controlling capacity."

This, I apprehend, disposes completely of Mr. Ellis's plea in regard to the exceptional position of the newer districts. In fact Regulation XXIX. of 1827 was very exceptional in its operation. The preamble shows that the Bombay Regulations therein cited were to be introduced into the Deccan and Khandesh from the 1st of September 1827. The second* section introduces the first twenty-six Regulations of the Elphinstone Code into the newer territories with certain exceptions. Sections 3, 4, and 5 relate to a limited class of men called Sirdars, for whom special Courts are provided. These provisions are clearly very exceptional in their nature, and can have nothing to do either with the Bombay Presidency or with any other part of British India. Section 6, so far as inams are concerned, is disposed of by the judgment above cited. Section 7 has been entirely repealed by the Bombay Courts Act (XIV. of 1869, Schedule I.)† Now as regards the only remnant of this exceptional Regulation. The reader will perceive, from the following contrasted statement, how the older districts would now be affected by the new Bill :—

---

* There is no first section—(see Harrison's Code, p. 63, Vol. I.)

† Bombay Code of Acts and Regulations by H. M. Birdwood, M. A., 1867—1871, p. 391.

Regulation XXIX. of 1827, *Sec. VI. (This is the law for the Sirdars' districts—Poona, Khandesh, and S. M. Country.)*	*The New Bill, Section* 3. *(This, if passed, would be the law for the whole Presidency.)*
Clause 1*st.*—All claims for damages against persons in authority under the late Government for abuse of power during the period.	(*a*) Claims against the Government to inams, or to hold land wholly or partially free from payment of land-revenue ;
Clause 2*nd.*—All claims against Government on account of inams.	(*b*) Objections to the amount or incidence of any assessment of land revenue or to the principle on which such assessment has been fixed ;
Clause 3*rd.*—All claims against Government on account of jagheers wurshasuns, pensions, nemnooks, and other advantages not hereditary.	(*c*) Disputes regarding public rent or revenue payable to Government, or complaints of exaction of district or village officers, stipendiary or hereditary.
Clause 4*th.*—All disputes regarding public rent or revenue payable to Government, and all complaints of exaction by mamletdars or district or village officers.	
Clause 5*th.*—All claims on account of village debts, all village boundary disputes, and disputes regarding the use of wells and water-courses.	

The first clause of Section 6 has actually become inoperative by efflux of time, because, by the Law of Limitation, suits cannot now be brought in the older or the new districts against any officer of the late Government for damages. The Summary Settlement Act has already disposed of Clause 2 ; and reason as well as law which is, or ought to be, the embodiment of reason, would likewise now reckon this provision to be superfluous. In regard to Clause 3, the Wattan Commission has disposed of the new districts, and, as a matter of fact, there are few or no jagheers in the older districts. Even if there were, Section 38 of Regulation

XVII. of 1827, Clause 1st lays down the law for all the Presidency in this matter, which is sufficiently drastic to satisfy the cravings of the sharpest Revenue Officer. A jahageer is, in its nature, ordinarily tenable during the pleasure of the Government and it is quite proper that the State should have it in its power to lay down rules for its continuance. All these jahageers however, even above the Ghauts, have been practically settled; and when the Summary Settlement Bill was brought before the Council in 1862, and it was announced that 38,764 holdings had been settled up to 30th April 1862, Sir William Mansfield described the Bill to be one "of indemnity to legalize what had been already carried out during the last eighteen months."* The residue of this exceptional law, therefore, which remains, is Clauses 4 and 5. These are clearly exceptional, even as regards the new districts; and the Revenue Survey being nearly completed in most of these, there is no reason whatever why they should stand on a different footing from the other parts of the Empire. It will, however, be seen that the provisions of the new Bill are, to a great extent, radically different from the 4th and 5th clauses of the old Regulations. Again, it is to be observed that there are no claims to village debts, so far as I am aware, in the older districts. Not a single reported case is to be found on the head. Village boundary disputes have been already provided for by the Revenue Survey Act;† and as regards disputes about the use of wells and water-courses, the Legislature has solemnly ruled that these matters shall be decided throughout the Presidency by the Civil Courts; and I am only surprised that this clause has not yet been swept off the Statute Book. I would remind the hon'ble members that "the laws of human nature are immutable; but the operations of man vary according to circumstances."‡ And, again, that "politics, when properly understood, may, like other subjects whose matter is variable, receive a

---

* See proceedings of the Legislative Council of the Governor of Bombay, 1862, Vol. i., p. 100.

† *Vide* Supra, p. 9.

‡ On the Methods of Observation and Reasoning in Politics, by Sir George Cornewall Lewis, Vol. II., p. 140.

scientific treatment: but no benefit will arise from claiming for its theorems a universality which they do not possess, by means of a confusion which can only lead to error." The disputes that have now arisen in this Presidency do not concern the new districts, but they do appertain to Guzerat, the two Konkans, and Canara, where land is held and owned on different proprietary tenures under a variety of grants from time immemorial. Some of these have been already adjudicated upon; but, in the nature of things, people over a large extent of territory have depended upon the law thus expounded for the protection of their rights, and upon the Statutes that are now in existence. To say, as the Bill now does that, after the 7th of August 1873, no new suit of the kind can now be brought, is to say that the doors of justice shall be closed against British suitors for no sufficient reason whatever. Mr. Ellis says that the Presidency Collectorate is excluded from this Bill because it has a separate law of its own; but even this law, poor as it is, allows a reference in revenue matters to an officer called the Revenue Judge. But Mr. Ellis's reasoning is singular. If Bombay has its own law, so have the older districts. Why are they to be deprived of it just at the very time when its action is needed more than ever, to protect the dearest interests of Her Majesty's subjects? Mr. Ellis would not touch Bombay Act IV. of 1868, which is merely an Act about interests which may be said to be trifling when compared with those which are now threatened by the new Bill. The plea about the Summary Settlement Acts has been already exploded by the recent High Court decision; and the Act of the Madras Council above quoted shows the necessity of a similar enactment being passed for the Bombay Presidency as one demanded on the ordinary principles of justice and broad State policy. About the end of Mr. Ellis's remarks, he refers to Act XXXIII. of 1871, passed for consolidating and defining the law relating to the settlement and collection of the land-revenue in the Punjab, Section 65. But this is a plea which is more plausible than substantial. The Punjab is clearly an exceptional province;* and, in the very matters to which Mr. Ellis refers, actions can

* See the evidence of Sir R. Montgomery, above cited, p. 17.

be brought in Bombay, Bengal, and Madras in the Civil Courts. Besides, that Act itself provides for making rules for the settlements that are to be made in the province, and it is nowhere laid down that a breach of such rules shall not expose the breaker of the law to the usual consequences. Again, Section 20 provides for suits against the Government for declaring that a certain entry in the "record of rights" is incorrect; it also enacts (Sections 44 and 45) that a suit may be brought in a Civil Court for contesting the levy of distress for recovery of revenue under the circumstances therein stated. It also provides for suits to set aside sales for the recovery of arrears of land-revenue under certain limitations. Altogether, the very Act referred to by Mr. Ellis shows its exceptional character as being applicable to a province situated like the Punjab, and it is no plea whatever for enacting the present law to destroy the rights of millions of British subjects in Western India. The Punjab Tenancy Blue Book shows the very exceptional nature of landed property in that province, which, I submit, can form no precedent for legislating for Western India in the older districts of which the landed properties are older certainly than the Norman Conquest of England, if not anterior to the commencement of the Christian Era. Even in England, different Acts are passed for the different portions of that part of the British Empire. In India, Bengal, Bombay, and Madras have their own Councils and their own laws. Even the Supreme Council passes, and has passed, different Acts for different portions of the Empire. Oude, the Punjab, and the Central Provinces have their own Courts and their own systems. Except on imperial questions, uniformity is the exception, and not the rule; but I maintain that to give the meanest subject of Queen Victoria the right to establish his rights and privileges against the Revenue Officers of Government, is an important principle of imperial policy, on which basis our present law, though decried by Hon'ble Mr. Ellis, is one that ought to be extended, if necessary, to less favoured districts, like the outlying territories of the Punjab, when they are ripe for mature legislation and codes of law. But to interfere with our vested rights on such pleas is a violation of all law and equity, which ought to be the ever-living guides of all the well-wishers of the British constitution. In conclusion, I would say to the hon'ble members of Council—*fiat justitia, ruat cælum.*

In Appendix I. will be found the text of the Hon'ble Mr. Ellis's Bill, together with the official record of the proceedings on its introduction in the Supreme Council. I wish here to take the opportunity of acknowledging the public spirit shown in the matter by the English journals of this city, and thanking them for the unanimous stand they have made against this daring encroachment on constitutional rights and the privileges guaranteed to the Indian people. The Bill has not yet attracted much attention on the other side of India, but the *Hindu Patriot* has spoken out; and I here subjoin a passage from the *Friend of India* of December 16th, which strongly censures this insidious project of law :—

"While the Supreme Legislature have just passed an Act which places all rent and land-tax litigation under the Revenue Executive as distinguished from the Civil Courts, the opposition in Bombay to the Bill of Mr. Ellis, which proposes to do the same for Western India, is unanimous. The people of Bombay have a real grievance in the exaction or over-assessment of the land-tax, which has characterised recent settlements. The Revenue Survey Department is accused by the *Bombay Gazette*, and with only too much truth of "undoing the noble work of conciliation begun by Mount-stuart Elphinstone, when the rack-rented and poverty-stricken districts that had formed the Peishwa's territory were annexed to the British dominions, and completed by the framers of the assessments made under the new survey thirty years ago." The Chief Justice and two civilian Judges Gibbs and West, decided that, under a legal interpretation of the land-revenue-rules, the tax-collectors could not take more than one-sixth of the gross annual produce. The High Court admitted that it could not limit the tax, but merely interpret the Executive's own rules. Now Mr. Ellis asks the Government of India's Legislature to declare that the tax-gatherer shall both fix the amount, and be his own interpreter of the rules under which it is fixed. If the land-tax is not to be annually or periodically reviewed by the Legislature, as the income-tax was and the salt, excise, stamp, postal, and other duties are, the ordinary Courts should at least be left to decide whether the Revenue Survey acts according to its own rules. Otherwise the rights of property will cease to exist."

BRIEF HISTORY OF THE WATANDAR KHOTES.

I PROPOSE to write a few observations on *watandàr khotes* in Southern Konkan or the Ratnagiri Collectorate. My object in so doing is to help, if possible, a compromise of the disputes that are now going on, between the Government and the *khote* landholders on the one hand, and the *khotes* and their tenants on the other. At the same time, I conceive it to be my duty to set forth clearly what *watani khoti* really is. For, unless this is clearly seen, no correct idea can be formed of the interests at stake, the nature of the experiment which is to be attempted, the sacrifices that will have to be incurred, and the propriety of the measures generally now proposed to be undertaken.

Who are the *khotes* of the Southern Konkan ? This question has been variously answered. Questions have been proposed from time to time to several officers of Government ; and they have reported differently. I do not propose to go through them all. For it seems to me that the opinions of some officers take the colour of their general proceedings, and the views that for the time appear to be in fashion. What we have to look to is the facts and arguments advanced. The *khotes* at one time could scarcely obtain a hearing. Property worth two crores of rupees has been legislated for in a manner so well described by Mr. Candy in his first report.* There is no doubt that many of the *khotes* have, by the operation of the Hindu Law, lost their original status and become poor. But that can be no reason for treating them unfairly. Their *sanads* and *kauls* show that they have peopled the country, reclaimed the jungles and wastes, built embankments and enclosed fields, made some roads, and brought the country, hilly and sterile as it is, into the highest state of cultivation. Mr. Townsend says :†—

* See Bombay Selections No. CXXXIV. (Second Series), compiled by E. T. Candy, Esq., Bombay C. S., 1873.

† Paras. 3 and 3 of letter No. 1192 of 1851, dated 11th March 1851.

3. 'The whole land of the Collectorate not absolutely sterile may,' the Superintendent remarks, 'be considered under cultivation;' this circumstance removes one argument which is generally advanced in favour of a new assessment, namely, that the reduction of rates will bring a large quantity of land into cultivation. This argument, therefore, does not apply to the Southern Konkan; two questions, however, remain for disposal—1*st*, whether the present assessment would in some places admit of being raised? 2*nd*, whether, if it would not, *any*, and sufficient, reason exists for introducing a Revenue Survey.

12th paragraph.

"5. The principle which is supposed to have generally influenced Government in ordering Revenue Surveys, is the desire to ascertain the capabilities of the land and of the people in connection with established customs, and to reduce or raise the assessment as shall appear equitable and consistent with the respective rights of the governors and their subjects; and though it is very satisfactory when, in the prosecution of this important equitable principle, 'brilliant success follows the survey and revision of assessment,' and very possible that in the Konkan 'the unpromising financial prospects of a survey will (not) be compensated by any immediate or marked improvement,' still, I submit, if the Government demands upon this district are too heavy, they should be reduced; not to do this would be to continue to subject of this already impoverished district to an assessment which is in many places a rack-rent, and that merely because the result would not be an increase of revenue: such a principle I respectfully trust that Government will not adopt."

74th paragraph.

I make room for this long extract in order to show why it was that a survey was ordered to be made in the Ratnagiri District. No increase of cultivation was expected: cultivation had already reached its maximum. The land-tax was "oppressively high."* Hence the necessity of a survey. There is no doubt that a survey of this

* Para. 63 of Captain Wingate's letter, No. 44 of 1861, to the Revenue Commissioner S. D., dated 3rd January 1821.

district was advocated from the first. The 'middleman' theory, which had come uppermost after a few years had elapsed since the glorious period of Lord Cornwallis' settlement of the Lower Provinces of Bengal, had affected men's minds, and in this Presidency the *khotes* were always a stock subject for some of the Bombay Revenue officers. The plains of the Dekkan had been overrun by banditti of all kinds, and the records were very imperfect. Surveys were therefore recommended more or less for all districts ceded by, or conquered from the Peishwas.* I have shown in the note that the survey was ordered more or less early in all the districts of this Presidency, for reasons which are explained in the reports, some of which I have quoted. So that the mere fact of the survey of the Ratnagiri district having been recommended by the early Collectors, is no argument by itself against the *khotes* or their interest in their lands and villages. Who are the *watandar khotes* of the Southern Konkan? What are their rights? Are they the proprietors of their villages, or are they mere collectors of the land-tax for the State? Let history decide the question. I quote below some of the early opinions of British officers and of the Bombay and Home Governments on the subject. The quotations are generally from Mr. E. T. Candy's first Compilation. Thus (p. 5):—

"The origin of the *khotes* is thus described by Mr. Pelly in his Revenue Report for 1819-20:—'The origin of the *khotes* is not easy to be traced, but it is believed they were introduced along with a grain rental no longer time back than about the time of Nizam Shah. The principal benefit arising from their institution is the facility with

* For Broach, &c., see the Survey Report of Lieutenant-Colonel Williams, appendix No. 115 to the Report of the Select Committee of the House of Commons; III. Revenue, 1833, pp. 783—841, particularly Chapter V. As regards Tanna or Northern Konkan, see page 892, Appendix No. 126 of the report; Southern Mahratta Country, p. 913, paragraph 426, of the same report appendix 131, and pp, 917—919; appendices 133 and 132 as regards the Dekkan. Khandeish, and the Southern Mahratta Country. The Right Hon'ble John Sullivan [see page 86 of the same volume] observes that—"Mr. Chaplin is referred to in the same letter as having 'strongly and forcibly pointed out the necessity of an early survey and assessment of the land throughout the new acquisitions in the Deccan."

which, through them, the revenues are collected ; for the more respectable of them are capitalists, who lay out money in bringing new land into cultivation, and may be considered as a description of yeomanry. Mr. Chaplin wrote in 1820 :—'They (the *khotes*) pretend to have been appointed by the Mogul Government, and it is said that many of their *sanads* are very ancient, being of a date anterior to the time of Shivajee, and the Peishwas uniformly respected their rights.' And in 1821—'The *khotes* are believed to have arisen during the Government of the Bijapur kings, and their *sanads* of appointments are said sometimes to specify that the person is constituted *khote* of the village to restore it to prosperity.' Mr. Dunlop wrote in 1822 of the *khotes* of the Salshimahal —'They are said to have had their rise from the distracted state of the province . . . . . ; the disturbances that attended these changes occasioned the total desertion of many villages, which were therefore farmed to any person who would engage for their revenue.' Lieutenant Dowell was of opinion that the *khotes* were introduced to facilitate the collection of the revenue, and to restore the cultivation in villages which were depopulated and laid waste by continued wars in the district."

Thus at the worst, the *khotes* have not been drones. They have worked, laid out money and labour. Who shall reap, is the question.

Again at page 7:—

"He [Mr. Hall, Resident at Malwan in 1817—18] then proceeds to detail a system, 'which, under the present circumstances appears to me the most eligible as tending to give employment to the former zemindars and the other revenue servants of the late Government. He then describes the Desais and Narkarnees, &c., and how he would utilise them ; then turns to the 'zemindars or *khotes*' in the 60th paragraph quoted above, and proceeds (paragraph 61):—'Where these zemindars are the exclusive proprietors of the lands in their respective villages, the revenues of each must, of course, go through their hands nearly in the same manner as before, though, as their cultivators will naturally be protected from any undue exactions, the pernicious consequences of the former system will be avoided ; in instances where they are merely sharers, their duty will not extend beyond that of

other patels, which is to furnish statements of the proportion of each individual's share of the revenue, from whom it will be levied direct by the Collector.'"

Miras and *watan* are equivalent; a *mirasi khote* is the same as a *watandar khote*; and yet some sort of sentiment would now seek to reduce the value of a *khote's watan*, when it would not dream of touching a *mirasdar*.

Thus (p. 13)—

"The Collector [Mr. Dunlop, in 1824] then mentions a paper in the possession of one of the claimants of the office of Despanday of Anjenwell, dated Sursan 997 (A. D. 1595), 'which calls itself a *kabulnama*,' by the manager of Mustafabad (Dhabol), addressed to the Desais, Mukadams, and *khots* of Inamb (?) Hamjabad, and which appears to be a series of decisions passed on complaints by these persons or by the inhabitants. The office is repeatedly styled '*mirasi khot*.' Several *khotships* which had been taken from the original proprietors are ordered to be restored. It appears also that the rights of *khotes* had even then become a saleable property, for one case of a *khotship* sold and disputed by some person is confirmed."

Again (p. 4) says Mr. Candy:—

"It is a fact of history, which has been proved and admitted over and over again, that the revenue payable by a *watandar khote* was not raised except at the time of general survey. Not a single instance is to be found of a village held in *khoti wattan* being made *dharekari* or *ryotwar*; and all the authorities (as will be shown further on) said that the Government did not know what the cultivators paid to a *wattandar khote*. In the course of this inquiry, it will be found that many officers recommended that Government should interfere between the *khotes* and ryots, and sometimes gave, as an authority, the practice of the Peishwa's Government; but, however arbitrary native Governments may have been, it will always be found that sanads were respected. Unless this distinction between sanadi and non-sanadi *khotes* be kept in mind, there is a danger of wrong inferences being drawn."

Next I quote some of the *kauls*, or leases, and sanads. Translations of some sanads are annexed. The village of Khanu was restored to the old *watani khotes* after a Punchayet had decreed it to be their *watan*. "They encouraged the ryots and cultivated (lands). They were to "continue to enjoy the *khoti* of the village which has been their *khoti watan* from days of yore, themselves, their sons and grandsons, and so on from generation to generation, and live happily."—The village of Usar (or Oosar) was ordered to be given to the Mankars "if it did not belong to the *watan* of any person."—Here is the superiority of a *watandar*. At Kurdhavden, after some political disturbances from which the *watandar khotes* had suffered, the matter was investigated by the celebrated Rama Shastri, and documents of the period of the Adil-Shahi kings and others were inspected and it was decided that the *khoti* was their *watan*, and the Mamlutdar was ordered to put "the aforesaid *kazi* (who was the *watandar khote*) in possession of the *khoti* of the village in question, and to continue in the *kazi's* possession all the lands, and water and water-courses, whatever there be of old attached to the *khoti*" (1765-66).—The village of Kelyen was bestowed as a *khoti watan*, the old *watandar's* family having become extinct. The grant ends thus:—

"Therefore, and considering that if the *khoti watan* be granted to him, he would bring the same into cultivation and improve it, I have the pleasure to confer upon him, on *watani* terms, the *khoti watan* which was in the hands of the Sirkar. Therefore, he, his sons, grandsons, and successive generations, are to enjoy the *watan*, the *manpan, thikans*, fields, &c., as usual, and to go on paying the revenue to the Sirkar according to the usage of the country, and hold possession of the *watan*. Thus (it is recorded)."—

The consideration for the grant was a *najar* of Rs. 2,000. Foongoos was granted as a *watan* on payment of Rs. 2,001 in 1767, and because the *mirasdar khotes* had deserted and left the country. The grant concludes thus:—

"Being aware that you have a large family, and that it is necessary to provide for you, we are pleased now to settle terms and grant

to you, (your) sons, grandsons, and so on, from generation to generation, the deserted *khoti watan* of the aforesaid village which was with Government. Do you therefore take the *khoti watan* of the village aforesaid into your charge, and enjoy yourself, your sons, grandsons, and so on, from generation to generation, the *hakdam* (rights and claims), *manpan* (titles and privileges), and other *kanoon kayedas* (rules and regulations) connected therewith, according to the custom of the surrounding villages, as also *thikans* and fields, and water of the water-courses, and to collect the Government assessment of the village according to the usage of the country, and live happily. For this purpose the sanads and letters are as follows."

The village of Susheri was granted as a *watan* on receiving Rs. 500, and in consideration of the expense incurred by the *khote* in improving it.—There is besides an inamdar of the whole village, who has only to receive the revenue: thus the distinction between the village proprietor and the alience of the revenue becomes at once apparent.

The *watandar khotes* have reclaimed the country from jungle, waste, and the sea; what was a mere desert before, is now a well-cultivated and peopled country. The *khotes* were either the original proprietors of their villages whose land tax was fixed by *kowls* or sanads or they were grantees of waste lands, and villages not owned by any other proprietor. Their property cannot be under two crores (Rs.2,00,00,000) at a very moderate computation. The origin of the *khoti watan* is very ancient; enjoyment uninterrupted and during successive changes of Governments has confirmed its strength and increased its value. More than 200 have been produced in the Ambegan case alone. Some of these, it will be observed, date so far back as 300 years and upwards. So that the origin of this species of property is lost in antiquity. Various Governments have succeeded each other; but no one has interfered with a *watandar khoti*.—(See Mr. Candy's Compilation p. 4.) His property has been uniformly respected. What is the view of this species of property taken by the British Government? Here is a *kowl* granted by the Collector of Ratnagiri under the orders of the Government

of Bombay. So that here, at all events, "the lands and fields, trees and bushes, water-courses, grass, wood, stone with all rights [in respect thereof]," were granted to the *khote*, and this because there was no other *watandar khote*. The following is the official translation :

SHRI.

(SEAL.)

No. 164.

This Kowlnama *(agreement or assurance from Government to the cultivator of the soil)* from Sirkar Company Ingrez Bahadoor *(the Honorable East India Company's Government)*, represented by John Alexander Forbes Saheb Esquire Bahadoor, Collector of the Southern Konkon Zilla, to Mohomed Ibrahim *wullud* Abdool Gaffoor Parkar, Khote of the village of Sakhroli, in the Turf of Khed ; and Khote and Mookadum and Koolkurnee of the villages of Mahapral, Panhaly, Koord in the Turf of Vasevi in the Talooka of Soovern-droog ; and Inamdar Khote of the village of Panadiri, and Inamdar (possessing) *thians* as *watans* in the Turf of Bankote ; and Inamdar Khote of the village of Sanadakari in the Turf of Govee ; and Khote of the village of Dharawali and of the village of Kolavli and of the village of Vave in the Turf Beerwadi in the Talooka of Rayagad ; and Inamdar (holding) *thikans* in the village of Rahatagar and in the village of Jhadigav in the Kryat of Neore, and newly-created Khote of the village of Agve in the Turf of Harcheri in the Talooka of Rutnagiri, (and) inhabitant of the village of Rahatagar. Soorsun Arba Sullaseen Myatynewa Alaf [corresponding with A. D. 1833], *kowlnama* granted in the following terms. You presented a petition on the 13th of September 1832, and one previously on the 12th of February 1831, to the effect that if the village of Agve aforesaid in the Turf of Haricheri, in the Talooka of Rutnagiri, lying ownerless and consequently managed by the (British) Government, be granted to you as *watan* including the *khoti watan* thereof, you would toil, labor, cultivate, and make improvements in the village. Thereupon Azam Baji Ballal Lotlikar, Mamlutdar of the Talooka of Rutnagiri,

was ordered to hold an enquiry. He accordingly held an enquiry, and submitted to the Hoozoor the papers and documents together with his report. An enquiry based thereon, &c., was next held in the Hoozoor, [when it was found that] there was never a single and fixed *kadim* * *khote* for the village, and those who managed the *khoti* [thereof] quarrelled among themselves and ruined the village; that, as they were unable to manage, [the village] lay unowned, and the village, the lands and appurtenances, and the *manpan*, &c., were all surrendered to the Peishwa Sirkar forty years ago, since which time they have continued in uninterrupted possession of the Government. No one but the Government has any right, interest or claim to the village either by reason of *wattan* or by any other reason whatsoever. On looking to the management of the produce, one finds that each year there is a deficit in respect of the village. Therefore, considering that unless a *wattandar khote* is created the village cannot prosper, a report was made to His Excellency the Right Hon'ble the Governor in Council, from whom an order, dated the 2nd April 1833, has been received to the effect that the village which is under the custody of Government may be granted to you on *wattani khoti* terms. Accordingly, the whole of the *khoti wattan* of the village is granted to you on behalf of Government with its four boundaries, except that portion of it which belongs to [the Chief of] Vishalgad. The terms thereof, as also those relating to the payment of the Government due, are as follows:—

1. The revenue due to Government in proportion to the aggregate produce from the said year to Sun Sallas Sullasin [corresponding with A. D.] upon the entire portion of the Government village aforesaid, exclusive of the moiety belonging to [the Chief of] Vishalgad [is] 157 0 14.

---

* Ancient, or of long standing.

157 0 14 [*viz*].

In Cash.

146 0 0 Actual receipts into the Treasury.

99 0 8 in Cash.

46 12 92 Exclusive of the moiety of the three kinds of principal grains—Rice, Nagli, and Waria—which the grantee is to retain for himself, the price in cash of the other moiety of the three kinds of grain, and of the whole quantity of all other kinds of grain calculated at the average rate for five years from Sun Tissa Ashrin to Sun Salla Sullasin [corresponding with A. D. to] at which they were sold in auction.

		Candies.	Mds.	Pailis.	Sirdees.	Rs.	
2 0 85	Moiety of rice...	0	$3\frac{1}{2}$	$1\frac{1}{2}$	0	@ 12 0 65	per candy.
27 12 72	Do. of Nagli...	$1\frac{3}{4}$	$\frac{1}{4}$	$1\frac{1}{2}$	1	@ 15 12 5	,,
6 4 34	Do. of Waria ...	$\frac{1}{2}$	1	$\frac{1}{2}$	0	@ 11 4 90	,,
6 0 73	Harik	$\frac{3}{4}$	$4\frac{3}{4}$	$2\frac{3}{4}$	1	@ 6 0 75	,,
4 0 93	Black Til	0	$3\frac{1}{4}$	$\frac{3}{4}$	0	@ 25 8 20	,,
0 0 35	Koolect	0	0	$1\frac{1}{4}$	1	@ 16 0 40	,,
46 12 92							

146 0 0

7 0 95 Inam.

2 0 45 Village God.

5 0 50 Shri Lakshmi Keshava.

7 0 95

3 12 19 Mahar Fouzdar.

157 0 14

[Candies. Mand. Pailies. Sirdees.]

$2\frac{1}{4}$ 0 $1\frac{1}{2}$ 3 Receipts in the kinds of grain—

Candies.	Mands.	Pailies.	Sirdees	
0	$3\frac{1}{2}$	$1\frac{1}{2}$	2	Rice.
$1\frac{3}{4}$	$\frac{1}{4}$	$1\frac{1}{2}$	2	Nagli.
$\frac{1}{2}$	1	$\frac{1}{2}$	3	Waria.

The annual assessment agreed upon is rupees one hundred and fifty-seven and fifteen reas in cash, and in kind candies two-and-a-half, seers two, and sirdees three, which must be paid annually for the period of fifteen years, commencing from the said Arba Sullasin to San Saman Arbyen [corresponding with A. D. 1833 to 1847].

2. Should a revenue survey of the abovementioned talooka take place at any time within the fifteen years aforesaid, the assessment [that would be fixed] therein shall not be made applicable to this village until the expiration of fifteen years from the above year. From the sixteenth year the revenue survey assessment would be levied from you. Assessment on classified lands shall be levied at the rate mentioned in the lease No. 152, dated the 7th March 1831, corresponding with the 21st of the month of Ramjan, Soorsan Ihide Sullasin Myatyne wa Alaf [A. D. 1830], whereby the Government *khalsa* land was granted to you as *wattan* ; and that the rest shall be calculated according to the usual custom and levied from you. Should no survey take place within the fifteen years, one hundred and fifty-seven rupees and fourteen reas in cash, and two-and-a-half candies, two seers, and three sirdees in kind as aforesaid, will be levied from you on behalf of Government from year to year until the survey will take place.

3.. The terms or conditions fixed by the Sub-Collector in the lease given to you, and referred to in para 2 aforesaid, shall be adhered to.

4. Parbhara Inamat, and Mhar and Fouzdar's dues are included in the amount in the first para. According to that, you are to pay the fees to the proper parties from year to year. In case they are discontinued by the [British] Government, you are to have it credited to the treasury of Government.

5. You are to meet separately the Baloote of the *hakdar* such as *haks*, &c., and the village expenses according to the usage of the Mahal.

This lease is granted to you, the five paras, therein having been agreed upon by the Sirkar. You should carry on the cultivation without any doubts or suspicion, and you should understand that the lands and fields, trees and bushes, water-courses, grass, wood, stone, with all rights [in respect thereof] to be your ancestral property, and you should receive the *haks, lavajimas, manpan, kanoo-kayada, far farmas vet begar, &c., in respect to the ancestral khoti from generation to generation, and enjoy the same through your descendants, and live in comfort.* No further trouble will be given to you. This *kowl* grant be known to all holders of *bab.*

Dated the 7th moon of the month of Rabilavel, Thursday, the 9th Shravan Shood 1755, the name of the year being Vijaya, the 25th July 1833.

[Here an English signature.]

Signature of MOHOMED IBRAIM, Dufturdar.

Signature of ANTAJI RAMCHUNDRA CHAVLE, Barnisi Karkoon.

(Signed) BAJI BALLAL LOTLIKAR, Mamlutdar.

The date the 11th August 1833.

Compared by me,

SHAMRAO VITHAL, Translator.

This sunud, therefore, well shows what *watani khoti* means and illustrates the practice of other similar *khotes.* The abovementioned village Agven is still enjoyed by the grantees thereof. Whether this grant gives lands, &c., or the right to a mere collection of revenue, I leave it to Government to consider. To quote the sunuds at length would unnecessarily lengthen this paper. They show at least that many villages were formerly deserts and were reclaimed by the *khotes.* Large amounts of money and labour have been expended; tenants have been brought, and lands let to them either at settled rents, or on the terms of dividing the crop equally, or in a

greater or less proportion. Besides these rents, the tenants worked certain days in the month on certain fields of the *khote*, or otherwise for his benefit, and received food for those days, but no other wages. Nobody interfered with them, or was allowed to do so. A *khote*, could, and can, mortgage and sell his villages without let or hindrance of any kind on behalf of Government.

Khoti villages are divided like any other private property. Amongst others, the following have been divided in the Suvernadurga Taluka by the agency of our Courts :—

Mouza Agar Vaingani.	Mouza Kansai.
„ Sukondi.	„ Dhamandivi.
„ Udhalen Budruka.	„ Sirsi.
„ Sanglata.	„ Nanganva.
„ Nilika.	„ Ghonsalen.
„ Verela.	„ Dabhila.

The following are in course of division :—

Mouza Waghaven.	Mouza Gharadi.

The following villages have been divided by the shareholders themselves in the same talooka :—

Mouza Sirasoli.	Mouza Karanjani
„ Rukhi.	„ Bhosten.
„ Konden.	„ Sirgan.

and others.

That *khoti* is a hereditary tenure cannot be denied. Hundreds of cases in regard to transfers by sale or mortgage of *khoti*, or of partition, will be found on the records. I will quote a few. 1 Morley, pp. 398 and 399 : Select decisions of the Sudder Dewanny Adawlut, Bombay, p. 144 (*Hanmantrao Janardan* vs. *Sala-uddin*) is a very important case, to which I shall have to advert further on). Again, *Sáñe* vs. *Oke* (3 Morris, 213); *Moro Trimbak Pokshe* vs. *Balaji Bapuji and others* (3 Morris, 403); *Gopalrao Vithal* vs *Mahadu bin Sudkoji* (4 Morris, 104, and foot-note at page 110), and the same case again at 7 Harrington, p. 36 ; *Parasaram Mahadaji* vs. *Krishnaji bin Ramji* (7 Harrington, 83); *Hyder Khan* vs. *Ali Khan* (9 Harrington, 582). In the last case, the

actual division of the village decreed by the Acting Assistant Judge, Mr. [now the Hon'ble Justice] M. Melvill, was confirmed by the Sudder Dewani Adawlat, Hebbert and Newton, Judges, presiding. Amongst others, the following cases decided by the High Court will show that when *khoti* villages are divided, it is the lands, and not simply the right of collecting the revenue:—special Appeal No. 20 of 1864, decided by Forbes and Couch, J. J; and Miscellaneous Appeals Nos. 16 and 17 of 1870.

Tanu Bibi (called also Taju Bai) *vs.* the Sub-Collector of Colaba.

Of the only decision against these (which does not take them into account, and which does not discuss Section 3 [Bombay] Act VII. of 1863), Mr. Candy speaks thus (pp. 84-86 :—

Tazubai's case.

"It should be especially noted that the decision in Tazubai's case applies solely to the *khotes* north of the Bankot river. The words *watni*, mirasi, *sanadi khote* are not once mentioned in the Judgement of the Joint Judge and of the High Court. Indeed, Mr. Justice Newton said—'No lease or title-deed of any kind is relied on. Practically, therefore, the case is of no use in this inquiry.

"One or two points, however, deserve notice. The reference to the extracts from the Peishwa's duftar, which were recorded in appeal, is valueless, as they clearly did refer to *watandar khotes*. This point was disposed of in the first division of this inquiry.

"The point, on account of which reference is always made to Tazubai's case, is thus expressed :—'*The khote has no proprietary right in the soil in his village, but an hereditary right to farm the revenue.*" The inapplicability of this to *wattandar* khotes is easily demonstrated. That even a sanadi khote is not the *absolute proprietor* of the soil, is clear. 'Unless a sunud contains words expressly granting the ownership of the soil, it must be held that the ownership of the soil was not granted.'—(Bombay High Court Reports, volume VI., page 199.) Now it may well be doubted whether any *khoti* sunud can be found in which the ownership of the

soil is expressly granted to the khote.* They all run, something like this—'You are, therefore, to enjoy from generation to generation the *khoti wattan* of the aforesaid village, and the *manpan* connected with it, to promote cultivation, to pay the Government revenue according to the practice of the country, and to live happily.' Several arguments have already been noticed, showing that it is impossible for a *khote* to have absolute proprietorship; and innumerable quotations might be made from all records in support of the arguments. But the point is almost self-evident. The question, then is—Has, therefore, a khote NO proprietary right in the soil of his village? Innumerable extracts might also be made from the old records to show that the wattandar khotes have some proprietary right in the soil, and very many of these extracts have been given. It will suffice to call attention to two convincing reasons for holding this view—

(1) The fact has always, more or less, been admitted by Government. At first, as shown by Captain Wingate, the *khotes* were considered by Government to be proprietors of their villages; and though these views were subsequently modified, Government never (except in the Resolution No. 1937, dated 31st March 1853 declared that a *khote* had no proprietary interest in the soil, while there are numerous Resolutions declaring the contrary. And the Resolution No. 1937, which seems to assent to the argument of Captain Wingate and Mr. Coles (an argument founded on a mistaken view of a mortgage bond), was itself founded on a mistaken idea as to the opinions of former officers.

As late as 1864, Mr. Ellis in the debates in the Legislative Council said:—

'It seemed to him to be beyond doubt that the *khot* has an interest (though not an unqualified one) in the lands of his village;' and again—'That the *khot* had an interest of a very high order in the soil, was fact, to ignore which was to commit a manifest injustice.

* But see p. 6 above.

(2) It is clear that a *khote* is an 'occupant' according to Section 3 of Regulation XVII. of 1827, and Government, in their Resolution No. 3765 (quoted above), admitted this fact. It is shown also that his rights were identical with those of other 'occupants.' He was never ejected from his occupancy so long as he paid the Government revenue, which was liable to be raised at the time of any general survey. In many documents he was styled a *mirasi khote*, and he exercised all rights of a *mirasdar*. If, then, a *khote* has no proprietary rights in the soil, neither can a *mirasdar* have any, which is absurd."

It has been held by the late Sudder Dewanny Adawlut that a hereditary *khote* cannot be turned out by a Collector. See Special Appeal No. 35, the decree in which is as follows:—

"*Bombay, Saturday 11th April 1829.*

Seal.

In the Sudder Adawlut.

No. 35.

LESTOCK ROBERT REID, Esq., Collector of the Southern Konkan ..... } Appellant.

versus

MAHADAJI BIN KANOJI MUTHA ..... Respondent.

Claim—Rupees 800.

This was a suit instituted in the Ratnagiri Zilla by the Collector against the respondent claiming to be *wattandar khote* of Oomreh village, to oust him of that right, and to establish the village as one which the Collector or Government had the right to farm to any individual or manage in any way.

The Collector was non-suited in the Zilla Court, and brings an appeal to the Sudder Dewanny Adawlut.

The Court is of opinion that, under the documents marked H H and I I, the respondent must be held to be *khote* of the village by hereditary right. The first of these documents, H H, is a *khote patra* passed by Ramji Muttia to respondent in Shuke 1725 on a dispute between them, in which he declares the respondent to be *khote*, and that the *wattan*, &c., belongs to him. The second, I I, is a sunud from Witoji Gaikwar Soubhedar to respondent, granted also in Shuke 1725, on the dispute above being settled by Punchayet and declaring him to be *khote*.

It appears that the village in question was deserted, and that the respondent's ancestors brought it back to be inhabited and to cultivation, evidently shewing the nature of the office and connection held in the village by those persons, and which has descended to respondent.

This is established by the evidence brought by the respondent, especially of the Mahars, as also by the documents above referred to.

The respondent has also a decree in his favour passed *ex parte* in the Registrar's Court, on a suit against Raoji Wittul, in which respondent was confirmed in his claim of *khote*.

This decree is mentioned by the Zilla Judge, but not recorded.

The respondent exhibited in the Lower Court several receipts for ten years for payments of revenue from Shuke 1725 to 1735. Appellant's vakil wants now to shew that these receipts are false, by shewing that similar receipts granted to other persons for the same years have different seals, and therefore that the receipts shown by respondent are forgeries. The Court does not think that anything satisfactory can be concluded from matter of such nature. It is, at the best, contradiction without proof as to the truth, and does not tend to elucidate the real question at issue.

Upon the evidence before the Court, then, it holds that respondent is the *khote* of the village by hereditary right, but the Court

does not find that there is proof of the nature and extent of that right. The Court thinks the Collector of Government must recognize the respondent as *khote*, but there is nothing before the Court to determine that, as *khote*, the respondent holds the village on a fixed payment, or that the Collector has not the right of increasing the assessment. The Collector cannot make any other person *khote*, of the village, but, the contrary not being set forth, there does not seem anything to prevent his raising the assessment in the same mode that he may have a right to do in other *khote* villages similarly held.

Costs, both in the original suit and in appeal, are to be borne by appellant."

This is a case from the Colaba district. The position of a *watandar khote* in the Southern Konkan is admittedly much stronger.

If it be the object of Government to convert all the *khoti* property into *dhara*, I cannot understand the jealousy of some officers as regards the power of the *khotes* on this subject. The law already gives them this power of making *dharas*. The following provision shows that a *khote's* alienations of lands will hold good, save as regards the Government revenue, which is the *dhara*.

Section III., (Bombay) Act VII. of 1863, runs thus :—

To what lands Act not to apply.

"This Act shall not apply to lands which, in villages held on talookdari, bhagdari, nurwadari, khoti, or other similar tenure, may have been partially or wholly alienated by the present or former holders of the said villages, or by any one of them; and, in the event of the management of such villages being at any time resumed by Government, all land so aliented shall revert to Government unaffected by the acts of the holders or any of them, so far as the public revenue is concerned, but without prejudice in other respects to the rights of individuals."

Government has already admitted *bhagadari* and *narwadari* tenures to be proprietary. There seems to me, with all submission, some confusion of thought which separates the *watandar khote*, and tries to make him out to be something less than the others. Be that

as it may the above law* recognizes alienations of land by the *khots* save as respects the Government *dhara* or revenue.† Such *dharas* have always been recognized and entered in the Government accounts. The following circular shows the practice followed in this respect:—

[*Translated from Marathi.*]

No. 85. No. 351.

To

The respect Dayim Khan, Mamlutdar of the Subha of Rajapur Soorsun year Seet Isharin Mayatain wa Alaf (A. D. 1825-26).

You made a report, No. 106, containing several paragraphs: on reading the contents thereof, the following order has been passed:—

In the first paragraph mention is made of what is said by the *khots*, namely, that in the year Khammas (A. D. 1824-25) some changes are to be made in the *dharà* [*i. e.*, amounts of revenue] payable by the cultivators, and that, on the introduction of such changes, the amounts of remission on account of drought should be settled. As to this, [you are informed that] as the *khots* say that the settlement has now been made, when the *dharas* had not been brought together and entered into Government records, THEY NEED NOT PAY [THEM]. In future, whenever a *dhara* payable by any person is to be assigned to him, it should be entered in the Government records with the knowledge of both parties. If this be done, we shall allow deductions to be made according to the settled assessment in cases of the nature which have occurred during the year.

1. In the second paragraph, mention is made of what is said about resuming *dharas* given to cultivators by mortgagee (*khots*). As to this, [you are informed that] mortgagees should not perhaps have given the *dharas*, but if they have [already] done so, and the

* This exactly corresponds with Section 8, Clause 2, Regulation XVII. of 1827.

† See Mr. Candy's Compilation, p. 28; also Special Appeal No. 92 of 1867, Appendix II, pp. 34-36.

present holders do not voluntarily give up [their holdings], you should take proper measures that the existing arrangements are not disturbed except by a decree of the Civil Court.

1. In the third paragraph, mention is made of an application made by the ryots, stating that the *dharas* which have been created by the *khotes* are not entered in the Government records, and that they should be entered in their names. As to this, [you are informed that] if, after confronting, the *khotes* be willing to have such entries made, you should enter the *dharas* in the Government records. But as the current year's settlement has been made, there seems to be no reason why fresh measures should be taken with regard to the settlement made in this year. In future, if a settlement has to be made, we shall allow calculations to be made according to *dharas*.

In all, these three paragraphs have been written. You are to take measures accordingly. The date the 8th of Moharam, corresponding with the 11th day of Shravan Shudha in the Shake year 1747, and the 24th day of August 1825.

(Sd.) D. A. BLANE,
A. C.

MAHAMMAD IBRAHIM PARKAR,
Record-keeper.

Seeing that the law* contemplates the alienation of portions of lands (or small *dharas*) by *khotes*, and seeing that such *dharas* were annually admitted into the Revenue Registers of Government at one time,† I need not quote many examples of such alienation. I shall therefore content myself with one from Mr. Candy's valuable Compilation (p. 28) :—

"At paragraph 31 of Captain Wingate's report, there is an instance of *khotes* bestowing some land in *inam* and *miras*. This, of course, they could not do with *wattandari* land. Here is an in-

* Regulation XVII. of 1827, Section VIII., Clause 8; Act (Bombay) VII. of 1863, Section 3.

† See the above Circular.

stance of a *khote* granting a *watton* to a *badhekari*, page 49 :—"There is a field mortgaged to Sale, who was originally a *badhekari kardé*. The *khote* says that in a year of famine he told Sale he must either quit the village or pay him a large sum towards his loss in the village. So Sale paid him Rs. 500, and got the land in mortgage, with agreement that it should be *wattan* if not returned in 25 years, so it will become *wattan*.' At paragraph 32 of Captain Wingate's report, there is an instance of, what that officer calls, a *khote* assigning away his *gawik* land to tenants in *wattan*. It appears that Kolwan, which was a hamlet of Patharat, had no houses; so the *wattandar kunbis* of Patharat came and cultivated the lands of Kolwan, and thus became *wattandars* there also. Like the villagers in Puna, page 85 (quoted above), they held these lands in the same way as their own *watni* lands. There was one *khote* for the village and the hamlet. This did not always take place. Thus page 53 :—'Khanu—The *gawik* land is about 100 acres, in which no present *kunbi* has a *wattan* to remain.'"

I may also observe that, really speaking, a *khoti* village is a large *dhara* in the possession of a *khote*. He can break it up—(Section 3, Act [Bombay] VII. of 1863; Clause 2, Section 8, Regulation XVII. of 1827). He can sell his interest in it, and it then ceases to be his *khoti* property, save that (unless the *khoti* is bought up by Government or resigned) there is a right in reversion to a deserted or abandoned *dhara* land in the *khoti*. The natural process of improvement of the district in this mode seems to me to be in this direction rather than in tying up properties, without any provision for their gradual divison and redemption by other persons, whether tenants-at-will or strangers. I cannot, therefore, as I said before understand why the *khotes'* lands should be looked to with jealousy and not be treated as *dhara* lands. Whole villages have sometimes been entered as *dhara* (*e. g.*, amongst others Talsuren* in Dapoli, Harcheri in Ratnagiri, Bhosten in Chiplun, and others), either entirely or in portions. Under the *khotes*, the *dharekaries* are the

* Talsuren was divided into six *dharas* for more than 50 years; why these have not been put down as such at the last survey in 1866-67, is a mystery to me. So, likewise we have *dharas* at Ladaghara and Dapoli, and other villages. In fact, whenever the village has been broken up, and the *khote* has parted with his interest, a new *dhara* has been created.

tenants in *khoti* villages who have permanent rights in the lands they hold. *The daspatkaries, dupatkaries, paunedupatkaries,* and *didpatkaries* are the only tenants, other than *dharekarise,* who have any permanant interest in the soil they cultivate. Except the interest conveyed by the *watandar khote,* his rights over his village are complete. And in the case of *Hanmantrao Janardan vs. Salauddin,** and in the other cases *ardheli* tenants (unless they were *dharekaries*) have been ejected. Previous to the present survey, no *ardheli* tenant, merely as such, has been ever allowed to set up a permanant tenant-right. As a rule, the *khote* has obtained land whenever it was wanted. The following extracts from Mr. Candy's valuable work will throw considerable additional light on this part of the subject. Mr. Pelly's Report for 1819-20 states as follows†:—

"1, *Dharekari ;* and 2, *Ardheli.*—

"The former of these seems very nearly to correspond with the *mirasi* of the Deccan. For he cannot be dispossessed so long as he makes good his payments according to the custom of the country ; and if he cannot actually sell, he may unquestionably mortgage, his property, though it is generally believed he may even dispose of it (which the *ardheli* cannot). And if the *dharekari* throws up his lands and emigrates, but returns after a very long, but not very accurately defined, period, he may resume possession, though, if the lapse of years be enormous, at some sacrifices (also not well defined) to the actual occupant. The *khote,* moreover, ought not of right to exact from the *dharekaries* one day's labour in eight, which is customary with other tenure . . . . The *ardheli* ryot, on the contrary, seems much on a footing with the *uparis* elsewhere. He is the tenant of the *khote,* or of some other holder of land, as the case may be. He cannot either sell or mortgage what he occupies, because it of right belongs to another, and he only holds it by sufferance. He may be dispossessed either by the owner choosing to take the land into his own hands, or to assign it to some one else, though this latter course would be considered a hardship if the ryot regularly fulfilled his engagements. Those engagements are, however, mostly annual,

* Select Cases, p. 144 [Ist ed.]

† Mr. Candy's Compilation, pp. 8 and 9.

and it is therefore obvious that the owner of the land might easily effect an ejectment by raising his demands, till the land under a payment of them would not be worth the cultivation. The *ardheli* ryot who may cultivate rice-land generally pays his landlord half the produce in kind, adjusted either by agreement* or actual admeasurement† at the period of harvest; and as the Government assessment is hardly ever so high, a gain, or, in other words, a rent, remains to the landlord. . . The *ardheli* ryot is regarded as every way inferior to the *dharekari* (*mirasi* or inheritor), but in none more so than in the obligation he is under of giving his services in aid of the head of the villages one day in eight as above explained."

Again, the following are the observations‡ of Captain Ovans in a letter to the Resident at Satara about a survey of boundary villages:—

"The cultivators may be divided into two descriptions in the country immediately below the ghauts—that is, *dharekaries* and *badhekaries*. The *dharekaries* are the permanent inhabitants of the villages, and are *wattandars* possessing the right of cultivation by inheritance. The *badhekaris* are temporary cultivators, shifting about from village to village at pleasure, and usually pay the *ardhel*, or assessment per khandy."

Next comes Mr. Dunlop ‖:—

"In the register of *pahanis*, or surveys, that have at different times been made of the districts under the Collectorate, the fields belonging to *kularji* or *dharekari* ryots are entered in their own names, whereas those belonging to the *khotes*, and cultivated by *ardhelis*, are entered in the names of the *khotes*. A cultivator's name being entered with his fields as *shetkari* was the record of his being a *dharekari*. This custom is perfectly regular in Salshi, Viziadoorg, Rutnagiri, and Anjenwell."

In reply to Mr. Dunlop, the Government, in 1825, observe ¶ as follows:—

---

* "Called *khund*." † "Called *thal*."

‡ Mr. Candy's Compilation, p. 11.

‖ *Ibid*, p. 14. ¶ *Ibid*, p. 15.

"The Government reply to this report was No 33, 19th January 1825. First as to the relations between the Government and the *khotes*—'Whatever may have been the origin of their title, they appear now to have acquired a right with which it would be neither just nor politic to interfere.' Next as to the relations between the *khotes* and ryots—'The Governor in Council is of opinion that any improvements should be confined to ascertaining and securing the rights of the other classes without setting aside the claims of the *khotes*, and even in this limited undertaking it is unnecessary to recur to rights that may have been enjoyed before the institution of the *khotes*. It will be sufficient to discover what was the state of property during some good period of the Mahratta Government. . . . . In the case of *dharekaries* of Sooverndoorg (mentioned by the Collector), there appears to have been a regular agreement between the *dharekaries* and the *khotes*, which is stated to have been reasonable to the ryots by the alteration in the value of grain. This does not appear to be a case in which the Government is entitled to interfere, at least to the extent proposed by the Collector. There can be no doubt that the *dharekaries* were at liberty to have sold their *wattan* outright, and thus to have reduced themselves entirely to the condition of *uparis*; and there is no reason why they should not, in like manner, have alienated a part of their rights, or why (if the bargain was not a fraudulent one) they should now expect to be allowed to recede from it. One privilege they appear to have retained, that of paying a certain proportion of their crop, which, however, disadvantageous, is fixed, and cannot be increased at the pleasure of the *khote*.'"

Forty-eight years have passed since this was written. The tenants here mentioned—such as the *dupaktaries*, *didpaktaries*, and others—have got their rights unimpaired to this day. What are the substantial grounds upon which Government can now be justified in going further, and creating new rights by legislative action without sufficient compensation to those who will be deprived of their vested interests?

The Government of that day further observed that—

"The *uparis* or *ardhelis* do not appear to possess even a usufructuary right to the soil which they cultivate, but to change

from place to place as they are invited by favourable terms. With them it seems unnecessary to interfere by any rule on the part of Government. The competition among the *khotes* themselves will always secure them the requisite remuneration for their labour; and if there appears to be a combination among the *khotes* to deprive them, it can be counteracted by the grant of liberal terms on the part of Government in *kulargi* villages, which would soon draw off the *ardhelis* from the *khotes*, or force them to grant reasonable terms. Perfect freedom of moving from place to place is necessary to the success of this plan, but it is supposed that the *ardhelis* are already in possession of that right."*

The reasons why a survey was recommended are clearly stated in that document; and there is not one that justifies a single step which has been taken at Ratnagiri since 1865.

In Mr. Reid's Revenue Report for 1827-28 occur the following remarks:—

"The tenants under a *khote* are of two kinds. Under the one are comprised the tenants-at-will, who cultivate the lands from year to year or for settled periods, as may be mutually agreed on between them and the *khote*. The other consists of cultivators who have, for a series of years, tilled the same fields on payment to the *khote* of a fixed portion of the produce (generally one-half), the latter being liable to Government for the land-revenue. These latter there is every reason to believe to be the remains of old independent proprietors; many of them are patells and village officers, who appear to have been reduced to this tenure by the encroachments of the *khoti* system under the late Government. An evident distinction was made between them and the mere tenants-at-will. Their fields descended from father to son; they were not liable to ejectment whenever the *khote* might consider it his interest to deliver the land occupied by them to other ryots, or to retain them under his immediate management; and their right to hereditary occupancy, under the condition of paying a fixed portion of produce, was generally allowed. With regard to this class, the right of the *khote*

* See Mr. Candy's Compilation, p. 16.

has perhaps been too far recognized since the introduction of our Government. The vagueness and uncertainty of their tenure, the difficulty of defining with precision what individuals should be comprised in this class, and the absence in the village records of survey, &c., of any mark by which they can be distinguished, have reduced them nearly to the conditions of tenants-at-will; and I apprehend that the practice of our Courts has much facilitated this result by the recognition of the full proprietorship of the *khote*."*

The last observation is not fair. At this time, the Revenue Officers of Government were the Courts for enquiring into these matters; and their invariable practice, founded upon old sunuds, *kauls*, and decrees, was a safer guide than mere speculation.

The following extract shows the *khote's* reversionary interest even in *dhara* lands in *khoti* villages :—

"He [Mr. Reid] then notices the case of the *dharekaris* of Soverndoorg (quoted above). Next, speaking of *dharekaris* in *kicheri* or mixed villages, he says :—'When a ryot holding under this tenure leaves his village, his land, if he have not otherwise disposed of it, reverts to the *khote*, who is answerable for the Government demands upon it, and therefore disposes of it at his pleasure. It becomes a part of his *khoti* property until the return of the *dharekari* within a certain period, on certain conditions prescribed by the custom of the country, entitles him to the restoration of his land.'"†

To sum up briefly, then, it seems to me that a *khote* is so far a proprietor of his village that he can mortgage it, that he can sell it, that he can sell portions of it, and create *dharas* or sub-proprietors paying a fixed Government revenue through himself, and with a right of reversion in case of a lapse; that he can levy what rent he pleases on all lands, except those held by *dharekaris* or by contract, but that where there is no contract, custom will not permit of his taking more than one-half or one-third of the produce; that

* See Mr. Candy's Compilation, p. 18.
† *Ibid*, p. 19.

his *dhara* tenants have the right to cut timber on their holding ;* that his own right to do so, even in the case of teak, has been also decreed,† and has now been ordered to be protected by that high authority, H. M.'s Principal Secretary of State for India ; † and that there is really nothing that makes his position worse than an ancient *mirasdar*, or any other proprietor. There are now *dhara* holdings larger and more valuable than many *khoti* villages. There are under tenants of 20, 30, or even 40 years' standing on *dhara* lands, who pay more than half the crop, and yet no one has said a word of interfering in their favour. On the contrary, such interference

---

* See the Resolution by the Bombay Government :—

Trees. No. 1240.

REVENUE DEPARTMENT.

Bombay Castle, 28th March 1868.

Letter from the Officiating Revenue Commissioner, S. D., No. 897, dated March 1863—Recommending, with reference to Government Resolution No. 719, dated the 22nd February 1868, the adoption of a suggestion made by the Collector of Rutnagherry, that there should be no interference on the part of Government with teak and blackwood trees growing on *dhara* land, the owners of such land being allowed to cut the trees or not as they please.

RESOLUTION.—Government concur with the Revenue Commissioner S. D., that there should be no interference on the part of Government with teak and blackwood, or any other trees growing on *dhara* land.

† Pp. 220, 221, Parliamentary Return, East India (Forest Conservancy), Part III., Bombay, 1871.

The following Despatch by His Grace the Duke of Argyll shows the final resolution of the highest authority on the subject, and yet Ratnagiri forest suits are still dragging their slow length along :—

No. 67.

(REVENUE FORESTS, No 11.)

The SECRETARY OF STATE for India to the GOVERNOR IN COUNCIL, Bombay,

5th August 1869.

1. I have considered in Council the proceedings of your Excellency in Council marked "Forests," for the month of May, which were transmitted in your Secretary's letter of the 8th June last, No. 35.

2. I approve the arrangements sanctioned in this resolution of obtaining possession of suitable tracts of country for forest purposes. The natural capability of Rutnagherry for the growth of timber makes it certainly, as you observe, a matter of great regret that such large tracts of forest-land should have been heedlessly given up in 1827 ; but, of course the engagement entered into then must be adhered to.

No. 73 of the Abstract : Forest Reserves in Rutnagherry, surrender to *khotes*.

(Signed) ARGYLL.

has been resisted by those who have advocated an interference in the case of the holder superior to the *dharekaris*—the *watandar khote.** I regret I cannot understand the reasoning for this differential mode of treatment.

The state of *watani khoti* property being as above described, the question arises—how is it to be dealt with on the occasion of the present survey and settlement? Is there any reason for any interference with the internal management of *watani khoti* villages; and if there be, how far can that interference be justified?

The valuable compilation of Mr. Candy, and the judgments of Messrs. Lyon, Izon, and Birdwood, in reference to the villages of Songam and Kolbandren, have thrown a flood of light on this question. There are, however, one or two points on which it seems to me that there is still some misapprehension.

Mr. Candy says (p. 85)—"Now, it may well be doubted whether any *khoti* sunud can be found in which the ownership of the soil is expressly granted to the *khot.*" I refer to page 6 of this work, where the above inquiry will be found to be satisfactorily answered. It will be observed that in the sunuds and *kouls*, the *khotes* are either confirmed in their title which they already had acquired as cultivators or capitalists, or new *watans* have been granted for a valuable consideration where no *watandar* was found to be in existence. Care, however, was taken in the latter case to insert a proviso that, in the event of the *watandar khote* turning up again, the *village* was to be restored to him. These points have been duly noticed by Mr. Candy.

Again Mr. Candy says (p. 89)—

"In Government Resolution No. 4088, dated 20th September 1861, it was said :—'His Excellency in Council believes that it has yet to be proved that a *khote*, who has once lost his right of management by failing to pass his *kabulayat*, can enforce its restoration in the Civil Court.' But the principle had often been recognized by the Civil Courts, though not directly against Government, for Government had never disputed the point."

* Mr. Candy's Compilation, p. 65.

But it will also be seen, from the decision of the late Sudder Adawlut in Special Appeal No. 35 (see pages 11 and 12 of this memorandum), that Government cannot turn out a hereditary *khote* ; and although such a *khote* has to pass an annual *kabulayat*, still the acceptance of it by Government is not optional with Government. The cases of *Freeman* vs. *Fairlie** and *Gardner* vs. *Fell*, have been recognized and supported in the recent cases of *Ganga Govind Mandal* vs. *The Collector of* 24 *Parganas*,† which shows that the *pata* in Bengal, which corresponds to the *kabulayat* in Bombay, is merely an evidence of title, and the conveyance is that which gives parties a right to claim the *pata* in Bengal and to pass the *kabulayat* in Bombay.

The same kind of *kabulayats* are passed by *khotes*, *dharekaris*, and even by inamdars in the Ratnagiri District. If we look to former practice, Mr. Candy shows that "not a single instance is to be found of the Peishwa resuming a *khoti watan*" (page 3). Many surveys have taken place, but no interference has yet been exercised in the internal management of the *watani khoti* villages. Various transactions are noted by Mr. Candy as having taken place about the year 1850 ; but there is nothing to show that there were any new data obtained by Government. The question now is, are there any new facts which have occurred to show the evils of the *khoti* system ? Mr. Loughnan‡ reported in 1851 that he "was not disposed, from his late investigations, to think that there is any oppression worthy of notice *generally* practised by the *khotes* in their villages." The same appears from the report of Mr. Glass, the Collector, in the year 1837, about the Weshwi Mahal. Again, so late as 1857 (see page 67 of Mr. Candy's Compilation) there was no evidence nor arguments justifying any legislative interference with the *khoti* properties. Are there any additional facts affecting the principles of the question ? Again Mr. Candy says (page 41) that the *dharekaris* "originally of course held direct from the State." Bombay Act III. of 1863, Section III., and the cricular above quoted (pp. 13 and 14), however, point to the practice of admitting

* I. Moore's East India Appeals, page 305.

† II. Moore's East India Appeals, page 345.

‡ See page 35 of Mr. Candy' Compilation.

dharekaris created by the *khotes* from amongst their tenants, after the necessary confronting and comparison.

Lists of *dharekaris* were thus prepared, and incorporated in the State registers annually.* The lists are called *goshwaras*, which simply mean abstracts of the village accounts.† Why this natural process of enfranchisement was not encouraged, I am not able to divine.

The Southern Konkan has reached the highest possible cultivation and development under the *khote* proprietors.‡ Notwithstanding constant declamation, I have not yet seen evidence of oppression exercised by the *khotes*. The contrary opinion has been expressed, whenever enquiries into alleged grievances have been instituted. We have had no evictions in this part of the country—because each side has understood its interests; and when the yearly tenant could afford, he has bought up the *khote's* interest; and converted himself into a *dharekari*. The new Survey, by creating new rights, has produced a state of feeling to which we had hitherto been strangers. The opposition of the *watandar khotes* has been described as "wrong-headed." *A* has property worth Rs. 1,000. The Survey reduces its value to Rs. 300 by transferring a part of it to *A's* tenants, who have done nothing to improve it; and *A* is then blamed for not thanking the Survey for this act of spoliation. Those who wish to study the facts will be good enough to refer to Mr. Candy's Compilation, and to the judgments of Messrs. Birdwood, Izon, and Lyon above mentioned. I would also refer to the judgment of the Hon'ble Mr. Justice Tucker in *Tanu Bibi's* case, and the High Court decision in the case of *Surve* vs. *The Collector of Ratnagiri* (Bom. High Court Reports, vol. 8, p. 1, A. C. J.) Leaving aside old sunuds, and the consistent usage of centuries, I appeal to the British sunuds, and ask whether such expressions as—"you are to consider as your *wattani* property the lands of the village,

* See the sub-holdings in Canara, and their history.

† In Bengal, they made from the *Chittas*, of which they present an abstract.—(See Zamindari Accounts, by D. Carmichael Smyth, Esq., Bengal C. S., second edition, p. 21; also Wilson's Glossary, p. 183.)

‡ See Wingate's Report.

including the trees and shrubs, water-courses, hay, wood, and stone, to enjoy from generation to generation," &c., &c.,—mean absolutely nothing when they are applied to *watani khoti* villages. To those who would advocate the destruction instead of the reform of such a system of property I would refer, amongst other works of authority, to Professor Fawcett's paper on the Nationalization of Land.* The measure now advocated in reference to Ratnagiri would be such a measure, open to another grave objection—namely, it would be a partial one. A *dharekari* may have 1,000 sub-tenants in Ratnagiri or Colaba, a *sutidar* may hold a thousand of acres in Tanna, and so may a *mirasdar* in the Dekkan, and yet the State will not interfere with his property. But if he be a *mirasi khote* or a *watandar khote*, then the Collector must step in. I do not seek "to repress individual energy and hinder the development of the human faculties." I only say, that let us have no class measures which unnecessarily interfere with private property. The *khotes* of the Southern Konkan are not middlemen; but capitalists, as well as cultivators, of all castes and creeds. Mr. George Canning, in his letter to the Chairman and Deputy Chairman of the East India Company, August 17th, 1817, mentions the following amongst the other points of agreement between the Board of Control and the Court of Directors:—

"3. That the creation of an artificial class of intermediate proprietors between the Government and the cultivators of the soil where a class of intermediate proprietors does not exist in the native institutions of the country, would be highly inexpedient."

But the *khotes* are indigenous cultivators. Apart from what the *khotes* have expended on reclamations, and otherwise in improving the state of the country, the following extract from Mr. Longfield's paper† on the Revenue of Land in Ireland, as applied to their case, is worthy of attention:—

---

* Fortnightly Review, Dec. 1872, pp. 627-643.

† Systems of Land Tenure in various Countries. A series of essays published under the sanction of the Cobden Club, second edition p. 90.

"But the rights of the present owners do not depend upon the truth of any theory respecting the origin of proprietorial rights. It is a rule of natural justice that says that, if I encourage a stranger to buy from a wrongful owner property that is really mine, I cannot justly press my own claims against the purchaser. This is the case with land in every settled country. The present owners either themselves purchased the land, or derive their rights under those who purchased it with the sanction of the community, represented by the authority of the State. In many cases, the State itself received part of the purchase-money from stamp-duties on the purchase-deeds."

If a tenant improves the land permanently with the actual or tacit consent of the landlord, by all means let him be paid for it. And if the Government be desirous of introducing a plan to enable tenants to buy up their holdings, no one can object to the enactment of a system like that introduced by the Irish Act (33 and 34 Victoria, Chapter 46) of 1870, with the necessary modifications. With all submission, I state that the Bengal Act (X. of 1859) is not applicable to the *watandar khotes*, for reasons which I have above given.

If, after considering the above representations, the Government should in its wisdom still be determined upon proceeding in the course upon which it has embarked, I can only suggest a compromise, which will proceed on certain principles and help to effect some of the objects which some officers have in view. I shall take as my basis a compromise which was talked over, as I understand, between Colonel Francis and Mr. Naro Babji Golé, who has supplied me with his notes of the conference.

1. The first proposition I would submit is that the *wurkus* land should be measured in large blocks and entered in the name of the *watandar khote*, with liberty to him to lease or to cultivate it in any way he likes. I submit this for the following reasons :—

(*a*) First, because the *watandar khote* has hitherto been responsible for the entire revenue of this species of land, whether cultivated or not, and whether the season was good or bad.

(*b*) The tenants do not pay the same amount for the same land continuously, but give only a portion of what they raise, while the liability of the *khote* to pay the revenue has always remained unaltered.

(*c*) The tenants do not, as a rule, always hold the same land, but give up and take as much as the *khote* can give, and help them to cultivate, often with loans of seed, and cash or bullocks.

(*d*) Even those who have advocated the tenants' case, have held that the "*kunbis* had no defined rights in *wurkus* lands."—(See Lieutenant Kemball's report in 1852, and Colonel Francis's in 1859.)

(*e*) The tenants have not spent a farthing on the improvement of *wurkus* which they have only used, and exhausted as far as they could, leaving the *watandar khote* liable in his person and property for the Government revenue on the entire *wurkus* land.*

(*f*) Colonel Francis now admits that it is practically impossible to accurately measure and demarcate every minute portion of *wurkus* (see p. 114 of Mr. Candy's Compilation); and as regards the Suverndurga, Khed, and Anjenwell Talookas, I would recommend this as a measure which will save the State several lakhs of rupees, and go to a certain extent in reconciling the *khotes* to the new settlement.

(*g*) I see that some such solution of the present difficulty is recommended by Mr. E. Candy at p. 114 of his Compilation.

(*h*) The *khotes'* right to all *wurkus* land is now in a measure, if not entirely, conceded by His Grace the Duke of

* It is admitted on all hands that the *watandar khote* is at least an "occupant." Regulation XVII., Section 5, Clause 1st, thus lays down his liability in reference to his holding:—"The occupant shall be liable in his person and property according to the Regulations, for the revenue of his land."

Argyll in his Forest Despatch (see p. 19 of this memorandum), and it should be at once published and promulgated. This will allay much irritation, and settle a number of suits of long standing. I submit, with great respect, that, after the Secretary of State's distinct order, and the decisions of the Hon'ble Mr. Tucker in the Gondall case, and Messrs. Birdwood, Izon, Lyon, Coghlan, and Baron Larpent, and of the High Court in the *Surve's* case, and of the advice of the Crown Law Officers (see Parliamentary Blue Book above quoted, p. 229), the Government ought not to waste its valuable time and money in such a contest with its own subjects.

(i) I do not admit the force of the argument which likens the *watandar khotes* to the Bengal zemindars. It can be proved from the Government's own records that the analogy does not hold. I will only mention one circumstance, and it is this: In *watani khoti* villages like Susheri near Khed, the revenue of which has been alienated to an inamdar, and the inamdar is different from the *khote*, the inamdar pays for his *dhara* holdings, if any, to the *khote*, and in the case of a lapse, although the revenue would be resumed by Government, the reversion of the *dhara* would be to the superior holder—the *khote*. However, even the Bengal Act (X. of 1859) would make all *wurkus* land, which pays a share of the produce, to be the *khote's* private property. The principal kinds of lands (see Mr. Carmichael Smyth's Zemindari Accounts, pp. 3, 4, 6) seem to be *ryotee*, which pay a cash assessment; *khamar*, which, when *cultivated*, pays a grain assessment; *aymah*, lands granted for charitable purposes; and *chakeren*, devoted to paying village servants.

Now the section of the Bengal Act which creates occupancy rights, runs thus:—

ACT X. OF 1859, SECTION VI.

Every ryot who has cultivated or held land for a period of twelve years, has a right of occupancy in the land so cultivated or held by him, whether it be held under *pottah* or not, so long as he pays the rent payable on account of the same; but this rule does not apply to *khomar, neejjote,* or *seer* land belonging to the proprietor of the estate or tenure, and let by him on lease for a term, or year by year, nor (as respects the actual cultivator) to lands sub-let for a term, or year by year, by a ryot having a right of occupancy. The holding of the father, or other person from whom a ryot inherits, shall be deemed to be the holding of the ryot within the meaning of this section. [The *italics* are mine.]

Right of occupancy of ryot cultivating or holding land for 12 years.

So that *khomar*, or k*homar* land, even in Bengal, ranks as private property.* This description applies exactly to all *wurkus* lands in *watani khoti* villages, and they ought therefore to be left entirely in the hands of the *watandar khote*.

(*j*) If any improvements have been made by the tenants, they ought to be fairly compensated. But the stocking

* Will's Glossary. pp. 275, 276:—"*Khamar, corruptly Khumar, Camar, Comar.* Beng. ( ), *Khumar, or Khumar.* Uriya ( ); A threshing-floor, the general threshing ground of a village, to which all the crops are brought to be cleared, and from which they cannot be removed till the landlord's claim is settled. Land of which the revenue was paid in kind, or of which the produce was divided in determinate shares between the cultivator and the revenue payer, or zamindar; applied also to lands originally waste, but which, having been brought into cultivation, where retained by the zamindars in their own hands, were let out at a grain rent: at the decennial settlement, these lands, previously unassessed, were declared subject to assessment."

See also Wilkins' Glossary; Appendix D to the Report of the Select Committee of the House of Lords, 1830, page 1518:—

"KHOMAR—

(B. *Khamar*).—Threshing-floor lands, the *ryots* of which do not pay a money-rent, but divide the produce at certain rates of shares with the *zamindar*; contra-distinguished from *ryoty* lands, in which the Government dues are paid in money."

and furnishing of lands, and digging of tanks at the tenant's expense (see Mr. Candy's second Compilation, p. 23), does not exist in Ratnagiri. And, as a rule, there are no *pucka* houses, and those huts that have been built, have been with the help of the *khote*. No capitalist will now spend a single rupee to improve his property by building new houses, or helping his tenants to do so, or building wells, &c., if his tenure be made uncertain, and the benefits of the outlay are to be swept off into the tenant's purse at any time.

(*k*) As regards the *wurkus* holdings of *dharekaries*, *daspatkaries*, *didpatkaries*, *dupatkaries*, and *paunedupatkaries*, they must be measured, and their contracts enforced.

(*l*) The *wurkus* land, as now assessed in blocks, should be alienable in blocks, and should be registered as *dhara* land, the rules in regard to holding whole numbers being enforced.

2. The only other species of land that remains is *bhàta*, or rice-land. About this, I should say that if the *khote* has spent the money, embanked the fields, and brought them into cultivation, I see no reason why he should not be allowed, like any other individual, to reap the fruits of his own industry.

In Mandangada, Kheda, and Saitawaden, where no inquiry whatever has been made into the nature of such holdings, I would, as a compromise (to last till the period of the guaranteed settlement), propose that they should be allowed to remain in the tenant's name on the following terms :—

(*a*) That the tenant, if he be a resident tenant, be questioned by the Settlement Officer, and required to state on oath that he has prepared the field with the *khote's* permission and at his own expense. This should be done in the presence of the chief villagers, the *khote* or his agent, and one or more persons from the neighbouring village.

If he will not take the oath, the *khote* should have the field entered in his name as his private property; and the assessment thereon should be divided in equal proportions between the Government and the *khote* during the currency of the settlement, after which it should be restored to the *khote*.

(*b*) If the resident tenant swear that he has improved the land at his own expense, and with the *khote's* consent, he should be entered as a permanent tenant (without any power of alienation by sale or mortgage, except with the permission of the *khote*), and the assessment on his holding should be divided half and half between the Government and the *khote*. A scale should also be laid down for the tenants buying up the *khote's* right or the *khote* buying up his, the preference being left with the hereditary landlord. Some such rules as those laid down in the Irish Land Act of 1870, or in Mr. Longfield's paper on the Tenure of Land in Ireland,* should be framed. Twenty per cent. compensation should be given in the three guaranteed districts to the *khotes*, in lieu of the sacrifice of their interest for the guaranteed period.

(*c*) In other districts, where the guarantee has not been given or, being given, has expired, rice-lands should be entered, as a rule, in the name of him who prepared them. The oath procedure, though summary, will be useful, and answer better for those districts where minute enquiry cannot now be instituted.

In case a resident tenant has prepared it at his expense, the provisions in clause (*b*) should be followed.

(*d*) There are many villages which have no resident tenants: all are *bhadekaries*. The village of Ambegana is one of these. Here all the land should be entered at once

---

* See particularly pp. 49—66 of his work above quoted.

26283

in the *watandar khote's* name; and if a *bhadekary* pleads purchase or other contract, he should be left to prove it in the Civil Courts.

(*e*) Such *wurkus* land as may be required for *rab*, or manure, of the tenant of the rice-field, should be entered in the tenant's name in Kheda, Mandangad, and Saitawden, and the present *khote* profit should be leviable thereon, *plus* 20 per cent. compensation from the assessment due on that land to the *khote*.

(*f*) The above rate of profit should be unalterable at any future settlement.

(*g*) The *wurkus* land attached to rice-holdings should be continued to the heirs of the resident tenants, without any power of transfer by sale or mortgage.

(*h*) The tenants should have no right to timber, but only to manure (*called kaval*); but they should be allowed to purchase this right like their holdings generally.

(*i*) No adverse right to accrue during the period of settlement.

(*j*) The terms *khoti khasgi*, and *khoti nisbat*, as applied to lands in *watani khoti* villages, are purely arbitrary—(see p. 101 of Mr. Candy's Compilation). And I cannot see, therefore, my way to make agrarian rules that some land shall be charged at one rate and some at another. Whatever is entered in the *khote's* name should be assessed in definite numbers and he should be left to settle his terms by contracts with his tenants. In Gudghen (Dapolee Tal oka) the Survey has been disowned by tenants; and by a private arrangement, which has been embodied into an arbitration decree (of which I have a copy before me), the old customary relations have been revived by an amicable settlement. The Mamlutdar, however, thinks that he must enter into their private transactions, and the tenants are therefore compelled to pay their assessment to the

Mamlutdar, when, in reality, it is the *khotes* who are paying it, and the tenants are paying their rents in kind as before.* Thus the people are unnaturally forced into a species of fraud by the officers of Government. Again, in other villages, to my certain knowledge, tenants have thrown up their holdings and entered into their old contracts; in some, their holdings have been sold up; in others again, old contracts have been violently set aside by the Survey. With all submission, I conceive no contract ought thus to be set aside, unless it be immoral or otherwise vicious. And Revenue Officers should rather favour the amicable adjustment of all disputes as much as possible.

3. There is one other matter in connection with *watani khoti* villages, and that is *vetha*. If a tenant cultivates the private lands of the *khote*, one day's labour in the week to help the *khotes* in his cultivation is one of the component parts of his rent.† And in the Southern Konkan, where there are no labourers independent of the agricultural classes, such bargains are a matter of necessity. Where a man cannot render the service, he may pay an equivalent. But sometimes a *khote* may not be able to get other labourers from a distance on any terms, while his own tenants would be available, as soon as their own fields were attended to. A man taking up a field at an easy rent on this condition, is therefore not in reality doing *vetha*; and, except in the case of *dharekaries*, such service should not be prohibited in the case of cultivators of any lands entered in the *khote's* name, whether rice or *wurkus*. I feel certain Government is not aware of the mischief which some over-zealous subordinates do by unnatural interference in the private affairs of the *khotes*. As one sample, I quote with great regret the following from the *Jagunmitra* of Ratnagiri, dated 25th Febuary 1867, and leave it to the Government to consider whether conduct like this is not calculated to create irritation and discontent, even in such a peaceful district as Ratnagiri :—

* This case is mentioned by Mr. Candy at p. 111.

† See paragraph 14 of Mr. Townshend's letter to Government, dated, 10th March 1851.

Copy of a petition forwarded through the Post Office by the Khotes of Peta Mandangad in the Talooka Sooverndoorg, in the district of Ratnagiri, to the address of the above Peta.

To

The MAHALKARI of PETA BANAKOTE,

in the Talooka of Sooverndoorg.

The petition of the undersigned Khotes of the said Peta, in the Talooka of Sooverudoorg. To wit:—

We beg to state below some of the acts which we believe to have been done under colour of authority, with the intention, among other things, of causing injury to us, and of coercing us into receiving Survey *pattas* contrary to the law.

1. On the 30th of November 1866, coolies living in the village of Toolsi, Turf Vesvi, were taken to the *mahal* (*i. e.*, the station) for the purpose of carrying loads, &c., belonging to the Collector's camp. It having been afterwards found that no loads needed to be carried, leave was given them to go home, and they accordingly started to go home. But they were immediately ordered back again, and you talked with them personally, and warned them that, although the *khotes* called them to work for the wages, yet they, (the labourers) should not go to work for *khotes*.

2. On the 8th of December 1866, when proclamation announcing the attachment of the village were sent, a sepoy, and, under his instructions, one Bhagnak, son of Goona Nak Mahar, inhabitant of Toolsi, warned all the people in the village saying—'You should not go to work for the *khotes* although they paid you wages.'

Thus they were directed, and (you) gave them directions (to the above effect) in person. The consequence of this is, that when we pay the ryots proper wages and call them to work, they say that, as the Mahalkari has given them orders personally, and warned them again through a sepoy, they cannot come. Thus saying the ryots do not come to work as stated above. And, owing to this, we have

been sustaining all sorts of losses in respect of raising (the usual produce, and clearing and preparing the ground for cultivation, &c., &c. No law or order whatever authorizes such directions or injunctions being given. This step has been taken for the purpose of throwing obstacles in the way of our work. We beg, therefore, to submit this application, and pray that we may be informed under what authority and orders you have given directions personally, and conveyed the injunction in the manner stated above. We beg that the reply to this may be sent within eight days from this date. If it be sent to Rutnagiri to the address of our agents, Balkrishna Ramchundra Ranade and Yeshwant Lingshett, Vakils, we will receive it. We are going to Rutnagiri to seek out redress from this grievance. As the warning and directions issued by you are not being sanctioned by any law or orders, we request that a fresh order may be communicated to the tenant to the effect that the previous order and warnings have been cancelled. If this be not done, we shall have to suffer losses in respect of the cultivation of our fields and the payment of the assessment, &c., and consequeutly we shall not be able to pay the future assessment. If no steps be taken as suggested above, we shall file a suit for damages. The reply to this should be sent in an unstamped cover to the place mentioned above. The aforesaid agents will pay the postage thereof. When the police peons came to publish proclamations in the villages of Konvali, Kojhar, and others, they caused the Mahars of each village to warn and themselves warned (the ryots.)

NARO VINAYAK, Deshmookh, Khote of Mouza Toolsi.

JAGANNATH SADASHIV, Deshmookh, Khote of Toolsi and Mahoo.

GUNESH RAMCHANDRA, Deshmookh, Pranta Vesvi and Toolsi.

ATMARAM VITHUL, Deshmookh, Toolsi and Konvali.

GUNESH NARSI, Mahajan Khote, Mouza Kojhar.

SITARAM VASSUDEV, Govalkar Khot, Mouza Voori.

VISHNU VINAYAK, Deshmookh.

SITARAM RAMCHANDRA Mahajan."

This has never been answered. The objectionable order was, I believe, withdrawn after some days. But, in some villages, it

would be impossible for *khotes to live* with such Revenue Officers in charge of their districts.

Ratnagiri had reached its utmost extent of cultivation when Major Wingate wrote upon it (in 1851-52). What Mill and others call the "unearned increment" has been swept into the public exchequer long ago. This district has more than reached the conditions laid down in the Secretary of State's despatch for a permanent settlement; and as some compensation for the troubles of the last twenty years, I would submit it for the consideration of Government whether this unfortunate district cannot now be settled permanently, once and for ever.

February 1st, 1874

THE KHOTI BILL

OF

1879.

[MR. ASHBURNER AND THE KHOTES.]

TO THE EDITOR OF THE *Times of India*.

SIR.—In the *Times of India* of the 8th instant appears a report of a speech of the Hon'ble Mr. Ashburner, on the occasion of his requesting permission to introduce Bill No. 3 of 1879 (A Bill to amend the law relating to the Settlement of Villages held by Khots).

Mr. Ashburner was not, I observe, in any way answered in the Council, probably because there was no native member present on the occasion.

The first of Mr. Ashburner's statements to which I take exception is his account of the origin of the Khots and their position under the Peishwa. The passage in your report runs as follows :—

In order to understand the relations of the Khots with Government and the ryots, it is necessary to consider their origin and position under the Peishwa. The country was in a very disturbed state, and it was absolutely necessary that there should be in an outlying district like the Konkan official representatives of the Poona Government, to organise measures of protection for the villages against the bands of marauders, which infested the rural districts. The Peishwa, therefore, delegated certain of his powers to Court favourites, usually Brahmins, sometimes by formal *sanad*, but more often, by a mere verbal order, to go to a certain village, take measures for its defence and cultivation, protect the ryots, collect the revenue, and remit the money to head quarters at Poona—the most important part of their functions."

"But wherever the Dharakeris threatened with extinction by the anarchy of the times, a Brahmin Khot was deputed from Poona to protect them and to encourage immigration and cultivation."

I maintain that the above description is incorrect, and I am at a loss to know from what sources the Hon'ble speaker can have derived his impressions. Mr. Chaplin, in 1821, when writing on the subject, evidently took a very different view of the Khot's origin from Mr. Ashburner. I cite from Mr. Chaplin's report, paragraph 16 :—

"The *khots* are believed to have arisen during the Government of the Bijapur kings, whose era was A.D. 1489 to 1685, being 29 years before the beginning of the Peshwa's dynasty, and are said to be usually possessed of *sanads* of appointment, some of which are two hundred years old. I have not been able to procure any of these *sanads*, but am informed that they sometimes specify that the person is constituted *khot* of the village in order to restore it to prosperity. This circumstance, added to the meaning of the word, which is a 'renter' or farmer, renders it extremely probable that the origin of the system was a *kaul* or *istawa* lease granted to individuals of property to restore the prosperity and cultivation of ruined village; but however this may be, it has grown into a regular established and acknowledged right of farm."

Although, in 1821, when Mr. Chaplin wrote as above, he had no sanads available for reference. There are now scores of such documents accessible on the records of the Rutnagiri Adalut and Collector's dafter.

Again, the above—cited passage from Mr. Ashburner's speech may with advantage be contrasted with the following extract from the Bombay Government Revenue Selections, Vol. III., pp. 1823, dated 23rd February, 1822, paras, 32-5 :—

"32. The origin of the Khots is not easily to be traced; it is believed they were introduced along with a grain rental, no longer back than about the time of Nizam Shahe" (*i.e.* about four centuries ago; 227 years before the rule of the Peshwa).

"33. The principal benefit arising from the institution is the facility with which through them the revenues are collected; for the more respectable of them are capitalists, who lay out money in bringing new land into cultivation, and may be considered as a description of yeomanry."

"34. They may be separated into two distinct classes, Wuttundar Khots, as they term themselves, and the Sircarre. Of the latter it is not necessary to say more than that they are liable at any time to be dispossessed by Government; though should they have long held their situations, their removal, if for no fault, would be considered an ungracious and harsh measure."

"35. The Wuttundar Khots, on the contrary, maintain that they possess an hereditary indefeasible right, and that they cannot be dispossessed; and there is this strong point in their favour, that under the late Government they frequently pawned, and even sometimes sold their offices. The old inhabitants, however, of the Northern Koncan ridicule the combination of Wuttundar and Khot as terms irreconcilable, maintaining that Khoti means only farm or contract, and that to designate a man an hereditary contractor is an absurdity. We respectfully refer to a report of the Commissioner in the Deccan regarding the origin and office of Khot, differing materially from Mr. Pelly's description."

Further information on the same point will be found in the Selections from the Government records regarding the Khoti tenure compiled by Mr. E. T. Candy of the Bombay Civil Service, which shows that Mr. Ashburner is in error when he says that the Khots were the favourites of the Peishwas and were deputed from Poona to collect revenue for the Peishwas.

Next, I would cite Mr. Ashburner's views as to the absence of hereditary or proprietary rights in Khots :—

"Much valuable time has been wasted in considering and discussing the position of the *Sanadi* Khots in connection with an endeavour to show that they held office on a more favourable and stronger tenure than those who had received no *sanads*; but the fact is there was no difference between them. Both held office only during good conduct, or so long as they gave satisfaction; and were liable to ejection, and were frequently ejected, on very frivolous pretexts. The issue of a *sanad*, indeed, was very often merely the authority to dispossess some previous incumbent who had fallen into disgrace. The theory that a *Sanadi* Khot could not be ejected is quite untenable. Is it likely that, when powerful chiefs like the Vinchorkar or the Kuddum Banday were deprived of their *jagirs*, the Durbar would hesitate for a moment to eject a humble Izardar of a single

village ? The fact is that under a despotic Government no man, whether jagirdar or ryot, had any rights whatever except what he could hold at the point of the sword, or secure by intrigues with the Durbar officials."

And here again I say that the Hon'ble speaker's opinions are erroneous, and against all authority on the subject.

This is what Sir Barrow Ellis said on the very point under discussion in 1864, in the Bombay Legislative Council :—"The khots most certainly had rights. These rights had been questioned by some revenue officers, but however they might be questioned, it seemed to him (Mr. Ellis) to be beyond doubt that the khot has an interest (though not an unqualified one) in the lands of his village and that this interest is a transferable and heritable property. It was very necessary to recognise this right in so many words. Its recognition by no means implied that the rights of the khot's tenant, (where these have proprietary or occupancy rights) would be ignored."

Sir Barrow Ellis's speech just quoted is, it is clear, in absolute conflict with the Honourable Mr. Ashburner's opinion, and the following references can, I think, leave no doubt as to which view is correct :—

(*a*) Captain (afterwards Sir George) Wingate quotes a report of Mr. Pelly for the year 1819-20 (see Revenue Selections, p. 9, para. 20); refers the origin of the Khots as being about the time of Nizam Shah, and in para. 25 of the same report, he states that their holdings had become hereditary.

(*b*). Mr. Townsend, in submitting Captain Wingate's report in 1851-52, observes as follows :—

"I also fully concur with the Superintendent, that it is necessary to define the respective rights of the *khot* over his tenant, but I may here express a respectful hope that the fact that the former have 'rights' as well as the latter will be borne in mind, and that if the Konkan has suffered from too heavy assessment, the khots are not answerable for the extreme poverty of the people with whom they are in many cases fellow-sufferers from the same cause."

(c) The following is an extract from Mr. Candy's compilation above referred to, Government Selections No. 134, new series :—

"It is a fact of history, which has been proved and admitted over and over again, that the revenue payable by a *watandar* khot was not raised except at the time of a general survey. Not a single instance is to be found of a village held in khoti watan being mode dharekari or ryotwar; and all the authorities (as will be shown further on) said that the Government did not know what the cultivators paid to a watandar khot. In the course of this inquiry it will be found that many officers recommended that Government should interfere between khots and the ryots, and sometimes gave as an authority the practice of the Peshwa's Government; but however arbitrary Native Governments may have been, it will always be found that sanads were respected. Unless this distinction between sanadi and non-sanadi khots be kept in mind, there is a danger of wrong inferences being drawn."

And Mr. Candy, after going through a mass of records, states the following as the result to which he had arrived :—"Not a single instance is to be found of the Peishwa resuming a khot watan."

So much for the despotic theory propounded by Mr. Ashburner.

I think I have shown that the Hon'ble Mr. Ashburner's exposition to the Legislative Council of the origin and rights is opposed to the carefully formed opinion of many distinguished men, while his speech affords no trace of any authority in support of his views. I believe that no such authority exists, and I trust that the public will be slow to adopt the novel conclusion which appears to have found favour with Mr. Ashburner on this subject—a subject of importance to a large class on this side of India.

I am, Sir,

Yours, &c. &c.,

V. N. MANDLIK.

September 1879.

BOMBAY, THE HERMITAGE,
January 1st, 1880.

To THE UNDER-SECRETARY TO GOVERNMENT IN THE LEGISLATIVE DEPARTMENT,

BOMBAY.

SIR,—I have the honour to submit the following observations on Bill No. 3 of 1879, entitled "A Bill to amend the Law relating to the Settlement of Villages held by Khots," for the consideration of His Excellency the Governor of Bombay, and the Members of His Excellency's Council.

2. In order to facilitate comparison betweeh the Bill as introduced into the Council, and as amended by the Committee, I tried to purchase a copy with the alterations printed in red ink, (as stated in paragraph 3 of the Committee's Report, *vide Bombay Government Gazette* for 1879, Part V., page 166,) but none was available. Hence it may be that some improvements or modifications have not attracted sufficient attention.

3. The present Bill contains provisions repugnant to all ideas of property, and is, in my opinion, inconsistent with facts and the history of the last sixty years.

4. The legislation of previous years was directed to the very legitimate object of conserving the interests and

rights of the under-tenants in Southern Konkan, so far as they were understood and if any measures failed, the attention of the authorities should have been directed to remedy the evil. Instead of this, questions are started in this Bill which will make the holding of private property precarious.

5. I forward herewith a copy of a pamphlet* which I wrote in 1874 for the information of Government, and copies of which I sent to the Hon'ble Mr. Tucker and the Hon'ble Mr. Chapman, and attended a conference at the Secretariat before the Hon'ble Mr. Tucker left Bombay.

4. Khots shall continue to hold their villages conditionally on the payment of the amounts due on account of the *jama* of the same, according to the provisions of this Act and of the Bombay Land Revenue Code, 1879, and of any rules for the time being in force made under this Act or under the said Code, and subject to the fulfilment of any other term or liability lawfully annexed or appertaining to their tenure.

6. Section 4, which I quote in the margin, suggests a wrong theory.

(a) Para 7 of Bombay Government Resolution in the Revenue Department, No. 2474, dated the 24th April 1876:—

7. All landed property in India, save what is declared free, is subject to the payment of a *jumma* or a land

* 'A brief History of the Wattandar Khotes of the Southern Konkan District in the Bombay Presidency, with a few suggestions for a compromise of the present Survey Disputes,' Bombay: 1874.

"The position of a khot, sanadi or non-sanadi, is thus that of a superior holder with the same rights conditional on the payment of assessment over his estate as against Government as the occupant of a survey number is defined to have by Section 36 of the Survey Act. It follows that he has full rights, subject to the provisions of the Survey Act, over all lands included in his estate which are unencumbered by the rights of holders subsidiary to his and that on the lapse of such rights the lands affected by them lapse to the khot and not to Government.

(*b*) Selections from the Records of the Bombay Government No. CXXXIV, edited by E. T, Candy, Bombay Civil Service, especially pp. 2-5, 16, 17.

(*c*) *Sanads* translated and published in appendix to the work mentioned in paragraph 6, 'and others published at pp. 622, 624, *Bombay Government Gazette* for 1864, and others on the records of Government. Some of these are British sanads granting the land of entire villages, with waters, trees, shrubs, monies, treasure, &c. &c.

(*d*) *Gardiner* v. *Fell* and *Freeman* v. *Fairlie* (1 Moore's Indian Appeal Cases, pp. 299, 305).

(*e*) *Ganga Govind Mundal* v. *The Collector of the Twenty-four Purgunahs* (11 Moore's Indian Appeal Cases, 345).

tax. It may be sold for realizing the land tax. But it cannot on that account be said that it is held, as this new definition seeks to make out it is. In other respects also the section is vague, and the addition of the last clause by the Select Committee makes it worse still. I beg to refer to a few authorities in the margin, showing that even under the least favourable view the khot's interest in his village is of a proprietary character.

(*f*) Extract from the observations of the Hon'ble Mr. Justice Tucker, in *Taju Bibi* v. *The Sub-Collector of Colaba* (3 Bombay High Court Reports, page 155).

"Now an interest in land which is heritable, alienable and includes a power of disposal over particular portions of the soil, and also a capability of restoration after temporary relinquishment possesses all the essential characteristics of proprietary right; and an estate composed of these ingredients cannot be said to be defective in any of the elements which ordinarily constitute property in land. An hereditary right to farm a particular tract of land on payment of an assessment which can only be varied under certain determinate circumstances, is a proprietary estate in the said land, though the possession of that estate may not confer unrestricted dominion over the whole or any part of that land, and though the estate itself may be limited by the estates which other persons have acquired in portions of the said land or in the entire territory."

(*g*) Special Appeal No. 35, decided on 11th April 1829.

'but the right) of further transfer of such land otherwise than by inheritance shall absolutely cease."

8. In the amended section, Section 7, the lines quoted in the margin, which were in the previous Section 6, have been omitted. No reasons are assigned for this step. The whole spirit of the Resolution of 1876, and the manner in which it has been worked, and the

understanding on which it has been arranged to compromise all suits, make it essential that this provision should be a part of the law.

"Provided that the said rates shall not exceed the maxima prescribed in Section 33, clause (*c*)."

9. Similarly the addition of the words noted in the margin to Section 8 of the amended Bill is objectionable, as it interferes with private contracts in regard to land over which the khot has full right unencumbered by any under-tenancy. The proposed addition directly conflicts with the provisions of the aforesaid Government Resolution of 1876, and all sound legislative principles in regard to private property.

10. Similarly, Section 9 of the amended Bill., lines 6 to the end, are objectionable, and opposed to paragraph 26 of the Government Resolution, which declared that such tenancies are heritable but not transferable except with the superior holder's consent. The addition will, I think, be the very fruitful parent of litigation.

"other than liens or charges created or existing in favour of Government."

11. The addition of lines noted in the margin is also objectionable. Since 1817-18, the only things advanced against the khotes are the privileges of under-tenants, and the power of Government to levy additional taxation. The addition of such provisions will not promote the interest of any person or persons.

Provided that the grant by the khot of any such right shall not affect any right of Government in respect of the land which is

12. The proviso to Section 11 of the amended Bill, as noted in the margin is objectionable, as a reference to the authorities marginally noted will prove.

the subject of such grant; or of the trees or other forest produce of such land.

(a) Section 3, Bombay Act VII. of 1863 :—

"This Act shall not apply to lands which, in villages held on talukdari, bhagdari, nurwadari, khoti or other similar tenure, may have been partially or wholly alienated by the present or former holders of the said villages or by any one of them; and in the event of the management of such villages being at any time resumed by Government, all land so alienated shall revert to Government unaffected by the acts of the holders or any of them, so far as the public revenue is concerned, but without prejudice in other respects to the rights of individuals."

(b) Parliamentary Return East India (Forest Conservancy), Part III., Bombay, 1871, pp. 220, 221.

No. 67.

(*Revenue Forests No.* 11)
The SECRETARY of STATE for INDIA, to the GOVERNOR in COUNCIL, Bombay.
5th August 1869.

I. I have considered in Council the proceedings of your Excellency in Council, marked "Forests," for the month of May, which were transmitted in your Secretary's letter of the 8th June last, No. 35.

No. 73 of the Abstract Forest Reserves in Ratnagherry, surrender to khotes.

2. I approve the arrangement sanctioned in this resolution for obtaining possession of suitable tracts of country for forest pur-

The past history of the district shows that the forests of Ratnagiri have been freely enjoyed as of right by all watandar khotes of Ratnagiri.

poses. The natural capability of Ratnagherry for the growth of timber makes it certainly, as you observe, a matter of great regret that such large tracts of forest-land should have been heedlessly given up in 1827; but of course the engagement entered into then must be adhered to.

(Signed) ARGYLL.

(c) Sanads mentioned in paragraph 7 above.

(d) Circular No. 85, dated 24th August 1825, by Mr. D. A. Blane, A. C.

(e) Sadár Diwani Judgment in Special Appeal p. 933 (Select Reports for 1820-40, pp. 144-47.)

Special Appeal No. 92 of 1877.

13. The provision in Section 15, especially clauses (*a*) and (*b*), requiring the khot to keep such accounts as may from time to time be required by Government, &c. *&c.*, is quite opposed to the khot watan being the khot's private property. I cannot conceive that any good would result to the State or to any individual from the provision. It amounts to something like calling upon every banker or sowkar to keep books of accounts for the inspection of Government officers. The provision for a penalty is objectionable.

14. I would also suggest that the difference between the privileged occupants—like *dhârekaris* and quasi *dhârekaris*, and occupancy tenants now created be properly defined. Other-

wise much confusion and litigation and distress is sure to result. (Section 16, 17, 33, and 34.)

(*a*) When a survey settlement is being introduced under Section 103, the rent payable by each privileged occupant, and the amount of jama payable by the khot, shall be announced in lieu of the assessment fixed on such survey number.

15. The necessity for such an amendment will be made clearer by reference to Section 39, clause (*a*), which is noted in the margin. It will be observed that this clause contemplates the announcement of rent payable by each occupancy tenant, while Section 33, clause *c*, and Section 8, as they now stand, also confer some such privileges on mere tenants-at-will. And as matters now stand, neither the new occupancy tenants, nor the tenants-at-will or from year to year, or holding under contracts, pay fixed rents, or can do so. For lands cultivated by both the above classes, rents in kind are only collected, when they are cultivated. (Government Resolution of 1876, paragraphs 6, 15, 16, 19 and 20.) The above provision will, therefore, I trust, be duly modified to meet the circumstances of the case.

16. In a special Act like this, it seems to me a measure of doubtful benefit to the people to encumber its provisions by introducing into it portions of the Bombay Land Revenue Code, 1879.

17. I object also to the indefinite power given in Section 40 to make rules, especially (1) to determine what land is dhara, and (2) to allot warkas land just as the executive for the time being may consider fair and reasonable, and to the vague clauses *d*, *e*, and *f*, of Section 40.

41. And whereas it is necessary, in the general interests of the people, to enable Government to promote the extension of forest in village held by khots, it is hereby enacted that Government may at any time constitute any uncultivated land in any village to which this act extends, or may hereafter be extended, a reserved forest.

Explanation--For the purposes of the Section "uncultivated land" means land which, has not been tilled for a period of twenty years next before the 1st June 1879.

42. Every reserved forest constituted under the last preceding Section shall be subject to all the provisions of the Indian Forest Act, 1878, and of any other law relating to forests for the time being in force, provided.'

(1) That upon the condition of duly performing such service connected with such forest as shall from time to time be prescribed by Government, the khot shall be entitled to a share of one-third of the net profits derived by Government from such forest after deducting the cost of management;

(2) That in the event of the service prescribed by Government as aforesaid not being duly performed by the khot, the provisions of Section 80 of the Indian Forest Act, 1878, shall be applicable.

18. Sections 41 and 42• are an entirely new provision on matters which were not before the Committee of 1874 and were understood to have been settled.

For the reasons stated above, and especially in paragraphs seven and twelve, and the authorities therein cited, and for the preservation of private forests which have been conserved and enjoyed as of right for the last sixty years, I trust His Excellency in Council may see his way to suggest the withdrawal of these two sections, the exactment of which will break through principles and sanctions of the highest public importance.

I have the honour to be,

Sir,

Your most obedient servant,

(Sd.) V. N. MANDLIK.

MEMORANDUM

ON THE

DEKKAN FAMINE, 1876.

The question of affording relief to the districts now suffering from famine in the Dekkan divides itself into three branches :—

A.—Relief by means of public works ;

B.—Relief in the shape of charity by donations of cooked and uncooked food ;

C.—Help to support cattle in the famine districts by emigration to the more favoured districts along the coast and near the Ghats.

I shall address myself to each of these three heads very briefly.

Section A.

This subject has already engaged the attention of Government. It is a matter entirely for the control and guidance of the State, and knowing, as I do, that the Government have taken it in hand and directed their full energies to its regulation and control, I shall say nothing more about it. There is one remark, however, which occurs to me, and that is in reference to the rate of wages. This, I understand, has been fixed at 2 annas a day. When CORN was selling at 14 seers and even 32 seers a Rupee, the rate of 2 annas was quite sufficient, but with the famine rates it should certainly be at least from 3 to 4 annas in the famine districts, half thereof being payable in corn and the other half in cash.

Section B.

This is a very important matter, and one in which the people must cordially and efficiently co-operate with the State authorities to

the best of their power. There are thousands in each taluka to whom the famine works will be of no assistance. They must be supported by the people or by the State. *Annasatras*, or food-giving houses, must be opened; sanitary regulations must be framed and enforced as mildly as possible through the agency of the people themselves. One such house has already been started at Indapur, in the Poona District; and I am in communication with the people of that taluka in order to found some more in suitable localities, both as regards house accommodation and the supply of wholesome drinking water. When that is done, I propose making the fact known throughout the taluka, so that those affected might seek relief. I have also placed myself in communication with my friends in the interior to concert measures for the establishment of relief-houses in other talukas and districts. Any suggestions which the local Officers will make in this connection will be valuable. All, particularly those who are entrusted with the carrying out of relief in any shape, will, I trust, pay particular attention to the customs and usages of the people.

There is one branch of this subject which does not actually bear upon this mode of relief. But it is nevertheless a form of relief, and as such must here be noticed. There is a small class of people who are ready to pay for corn at moderate rates; but from the absence of sufficient competition, and the ready means for combination in small stations, the prices have been so suddenly raised that these people find themselves driven to seek relief as paupers when they would ordinarily purchase their corn if the market were in a healthy condition. For this class of people I would encourage private individuals to open grain shops, and, if necessary, guarantee them against loss, either by private subscription or by the help of municipalities, and in the last resort, by assistance from the State treasury. No doubt, the laws of demand and supply ought not to be lightly interfered with. But where these laws themselves have become practically inoperative, I see no help except to lay them aside as inapplicable to such a crisis as has now arisen.

Section C.

This is the last but, in some respects, the most important portion of the scheme. If the cattle die away by thousands, as they must

either by starvation or otherwise, the famine will really be felt for some years to come. Nearly the whole affected area is inhabited by a purely agricultural population. They naturally depend on their cattle, and it behoves the public to adopt measures for their conservation. I have heard of a plan of bringing them to Bombay. But a moment's consideration will show that such a scheme will be unpracticable for more than one reason. It will be only feasible in the case of those districts which are near the line of Railway; but even then it will be fearfully expensive. Again, all these cattle cannot be kept in Bombay, for there is no room here. Even the local Panjarpole sends its cattle to Chembur in Salsette, and Bhivdi and other places on the continent, for want of accommodation. Again, unless it is intended that the cattle should hereafter remain the property of the Panjarpole, they will have to be returned to the several districts and at a very great expense. What I propose is the establishment of local centres throughout the Canara, Ratnagiri, Kolaba, and Thana Collectorates, and in the Maval Talukas of Nasik, Poona, and Satara. I would request each Collector to appoint from ten to twenty-five spots where four or five hundred head of cattle can be fed and watered. I would encourage the owner of every ten or fifteen head of cattle to accompany his stock; and where a man has only two or three, I would ask two or three persons to combine and elect one to accompany their joint stock; the men to be supported entirely by charity for one year and to be allowed to return to their homes with their cattle after rainfall. Detailed regulations will have to be drawn both for collecting and distributing the cattle, for keeping them in the appointed centres in times of famine, and seeing them back to their homes. I propose to write to landholders whom I know personally and through my friends. I think the plan feasible, and with the assistance of Collectors and their subordinates, it can be worked with success. Unless the cattle are preserved in this or some other mode, the sufferers from the famine will be permanently crippled for years to come, and the famine will practically extend over some years. I have written to the Secretary to the Panjarpole Trustees on the subject. They have a large fund which ought to help us in this emergency. I believe the constitution of their trust enables a part of the capital to be indented upon in times of difficulty, and

Government can easily ascertain how this fact stands. There is one more matter which requires to be mentioned. Several *kuruns* or grass-lands have been sold by auction at the beginning of the year. These should, I think, be repurchased by offers of fair compensation. And if the contractors will not be reasonable, I would, as the last step, even resort to the legislature to buy in their contracts by fair compensation *for the necessities of the people.* I know strict economists may laugh at this, but where a question of life and death arises, political economy must, I think, give way.

VISHVANATH N. MANDLIK.

Bombay, 28th October, 1876.

P. S.—On enquiry I understand that the rate of two annas has been fixed, because it can fetch one *pakkâ seer* of bajri grain, which is more than enough to feed an able-bodied labourer; and as the object of the relief works is feeding rather than using labour in the ordinary way paid by wages, the above sum would suffice for that end. If *bajri* rose to 4 *seers* per rupee, Government would have either to give a *seer,* or pay 4 annas.

V. N. MANDLIK.

7th November 1876.

TESTAMENTARY POWERS

OF

HINDUS AND BUDDHISTS.

[*A LETTER TO THE GOVERNMENT OF BOMBAY.*]

To

C. G. W. MACPHERSON, Esq., C.S.I.,

Under-Secretary to Government, Judicial Department.

Dated the Hermitage, Bombay, January 6th, 1882.

Sir,

In compliance with your letters as per margin, requesting my opinion on the provisions of the Bill to declare the extent of the testamentary powers of Hindus and Buddhists, and to regulate their wills, I have the honour to submit my remarks on the said Bill, and to request the favour of your laying the same before His Excellency the Viceroy in Council.

Judicial Department, No. 6649 of 1881, dated 7th October 1881; No. 8718 of 1881, dated 14th December 1881; No. 8549 of 1881, dated the 24th December 1881.

2. On a careful consideration of the provisions of the aforesaid Bill, I am inclined to hold that the proposed Hindu Wills Act is unnecessary. One part of it will, at the best, be nugatory, while another is likely to be mischievous in its effects.

3. Before I address myself to the different provisions, I beg to state that in my opinion no necessity of such a law has been made out, and that an enactment of that kind will not fail to be regarded by the Hindu community as the first inroad on their sacred law, and

an infraction of the pledge given to them of administering their own law to them in matters of succession and contract. Whether or not there were germs of testamentary power in the old Smriti law of the Hindus, it cannot be denied that a kind of wills were once in vogue, and usage has recently brought them into greater practice. It seems to me, therefore, that placing restrictions on the execution of wills and guiding their interpretations by the fine-drawn rules of the English law, which are not generally suited to Hindu society, is hardly a mode of supporting or developing a system of devise in India. The Statement of Objects and Reasons says that the Hindu Wills Act (XXI. of 1870) has been found to have satisfactorily prevented forgery, perjury and fraud during the last eleven years in the Lower Provinces of Bengal, Assam and the towns of Madras and Bombay, and that, therefore, it is desirable to extend the provisions thereof to the rest of British India. I may observe that in the correspondence circulated with your letter there is no evidence whatever adduced to show that where the Indian Succession Act and the Hindu Wills Act did not operate, there has invariably been found more forgery and perjury than in the aforesaid provinces. It seems questionable how forgery can, to any appreciable extent, be prevented by the proposed enactment. As regards perjury, the making a written instrument necessary for a will may, to some extent, prevent perjury; but, I submit, that on such reasoning a way may be opened for an enactment even like the English Statute of Frauds in respect to all kinds of civil transactions generally. No transaction in India absolutely requires a writing. This is the received law for ages, and I do not see why wills in the Mofussil should be selected for the beginning of an alteration of that law. I shall discuss this question further on and try to show the mischief which may attend the innovation. It would appear from paragraph I of the Statement of Objects and Reasons, that uniformity of law in the different parts of India is one of the aims of the present Bill. If that is so, the exclusion of the Mahomedans from the operation of the present Bill is inexplicable. Nuncupative wills are permitted by the Mahomedan as well as by the Hindu Law, and if the prevension of possible perjury is to be made a ground for the alteration of that law in the case of the Hindus, the self-same considerations ought to hold good in the case of the Mahomedans also. The present Bill, as well as the Act of 1870, are

extensions of the Indian Succession Act of 1865, which was expressly declared to be inapplicable to a Hindu, Mahomedan, or Buddhist. If the Buddhists in Burmah want such a law and say so, the Legislature should content itself by passing such a measure as will meet with their wants; but in regard to the Hindus, I submit, any such invasion into their laws is as distasteful to them as it is to their Mussalman fellow-subjects: and I would beg of the Legislature to pause before it enacts such laws. The provisions of Section 6, which contemplate an exemption of certain districts from the operation of the Bill, also points to the conclusion that the Bill is not the result of any requisition on the part of those for whose behoof the measure is alleged to be proposed; but that it is, with all submission, one more illustration, of the Indian legislative experiments upon the political and religious feelings of the people. Again it is stated that in the districts where the Hindu Wills Act, 1870, was in operation, there was reason to believe that the Act had "enhanced the value of property by making the title thereto more readily ascertainable and by facilitating its transfer." All I can say in reference to this observation is that the grounds for this conclusion have not been placed before the public. So far as Bombay is concerned, I have been intimately connected with the history of property in this Island for more than twenty years, as a property-holder, as a member of the Corporation of H. M.'s Justices, a Municipal Corporator, and Member of the Town Council for several years, and I am bound to say no such facilities have been created, nor has the value of property been enhanced by the results of the said Act. With these few preliminary remarks I shall now proceed to consider the Bill in detail.

4. (Section 3.) This section purports to declare the extent of the testamentary power inherent in Hindus and Buddhists. In the first place the so-called declaration of the extent of testamentary power is merely verbal, and does not help in the slightest degree to clear up the knotty question of devise; secondly, it is couched in words which, I apprehend, will tend to create confusion; and thirdly, that the attempt to declare this extent is in itself premature, in the present state of the Hindu Law as administered by our Courts.

5. To begin with my first objection, it is declared that the power of a Hindu or a Buddhist to bequeath is co-extensive with his power to alienate, subject to certain reservations on the score of the law of survivorship. In regard to this, I may observe that the law of alienation, as well as the so-called law of survivorship must be ascertained before the present section can become intelligible or workable. If they cannot be ascertained, except by a reference to the Hindu Law, I can see no good done to the community to have one set of phrases substituted for others equally unintelligible, and to which they have never been accustomed.

6. My next objection is directed to the use of such terms as the right of surviving members, which are analogous to the English terms '*jus accrescendi*,' or the right of survivorship. There may be some resemblance between a Hindu undivided family and an English joint-tenancy, of which the *jus accrescendi* is a necessary incident; but they are not the same: (*See* Sadabart Prasad Sahu *vs.* Foolbash Koer, III. Beng. L. R. (F.), p. 31). And to attempt to describe a Hindu family by English phraseology, based on imperfect analogies, cannot but be fruitful of grave confusion: (*See* Dr. Theodore Goldstucker's paper on the deficiencies in the present administration of Hindu Law, particularly page 19 and note.)

7. My third objection is that the questions of (1) what is self-acquired property, (2) what is alienable property, and (3) how far members of an undivided family can control alienation, are among the most intricate points of Hindu Law, whereon there has not been a satisfactory course of decisions by our Courts. The conflicting decisions on this subject that we often meet with show that the nature of alienable property has not yet been thoroughly realized, and until that is done, it would be altogether premature to have resort to any legislation.

8. In a recent case (Second Appeal No. 12 of 1881), a Division Bench of the Bombay High Court has upset a sale under a partition decree against the father at the suit of his son, brought to contest such an alienation. Carried to its legitimate conclusion, this decision would make partition almost impracticable, if not impossible. And in Western India, this decision would make the

applicability of the present Bill altogether nugatory. It may be argued that on such conditions as these, no such law can ever be introduced. While on the one hand there can be no doubt that the existing errors and confusion will be only diminished when our Judges begin to base their decisions on Hindu Law on evidence of custom in each case properly recorded, and not on their own interpretations of translated abstract texts made still more confusing by the necessary importation of English ideas ; on the other, the Legislature must be supremely cautious, and avoid all interference with the social and religious fabric of the Hindu communities, on some assumed standard of public good, to which we, Hindus, do not subscribe.

9. (Section 4) I may generally remark that any provisions that restrict either the execution or the carrying out of a will, discourage, so far, all testamentary disposition. While I should be free to admit that some restrictions may have to be put up with, when they serve to suppress fraud or further the circulation of property, these restrictions themselves may often be too dearly purchased. It should not be forgotten that the law of testamentary disposition in its present shape is itself in comparative infancy, and coupled with the instinct of *Dana* and *Dharma*, it may, if rightly directed by our educated bodies, yet do a world of good. It is, therefore, I think extremely desirable that the law should grow unfettered along with other social and legal institutions of the people. To transplant the intricate law of England on the subject of wills into India would, I fear, result in defeating the righteous intentions of many a Hindu testator.

10. The great change which this section introduces is that in extending section 50 of the Indian Succession Act, 1865, to Hindus all over India. The Bill proposes to abolish all nuncupative wills. Under the Hindu Law which does not absolutely require writing for any transaction, it has been held that wherever the Hindu Wills Act, 1870, did not apply, a Hindu nuncupative will is valid (*see* Bhagvan Dullabh *vs.* Kala Shankar, I. L. R., I Bom., p. 641, and the authorities cited, *ibid.*, p. 644). It, therefore, lies on those who wish to alter that rule to show what mischiefs have been caused by the present law.

11. Again, in respect to the framework of a will, the tendency of Courts has been not to subject a Hindu will to all the formalities

and technicalities of conveyancing. Accordingly, attestation has been held to be unnecessary (*see* Radhabai *vs.* Ganesh Tatya Gholap, I. L. R., III. Bom., p, 7), and yet rule III. under section 50 of the Indian Succession Act, which is to be extended to Hindus in the Mofussil, will require it peremptorily.

12. The rules of the construction of wills, and void bequests, and of bequests of various other kinds, and the doctrine of election, expect from an ordinary Hindu testator in the Mofussil a greater amount of knowledge and precision than I have come across in the Presidency town for more than twenty-five years; and it seems to me desirable that the rules to be incorporated should be framed, if they are to be framed at all, in view of the actual form in which wills are generally made by the people, and should not seek to regulate the execution of wills before resort to them has become quite general. Notwithstanding the present freedom from any restraints on devise in the Mofussil, more Hindus die intestate than testate, and any restrictions now placed thereon will, therefore, as I have said before, impede rather than facilitate the progress of testamentary disposition.

13. On the grounds above detailed, I consider it my duty to express the hope that the further progress of the present Bill may be stopped by His Excellency in Council.

14. I beg to apologize for the delay which has occurred in submitting this reply, and which has arisen from the heavy pressure of my non-professional as well as professional engagements.

I have the honour to be,

Sir,

Your most obedient servant,

(Sd.) VISHVANATH NARAYAN MANDLIK.

[*Printed from the office draft.*]

RELIEF OF AGRICULTURISTS.

[ROUGH DRAFT OF A BILL FOR THE PURPOSE.]

A Bill to extend the usefulness of "The Land Improvement Act, 1871," by enabling Government to employ private enterprize in making advances for the general purposes of agriculturists in the Bombay Presidency.

Preamble: Whereas it is expedient to extend the usefulness of "The Land Improvement Act, 1871," in the Bombay Presidency, by enabling Government to make advances to agriculturists for general purposes through the agency of joint-stock Companies duly constituted for the purpose; and whereas, with this object in view, it is expedient to provide for the formation of "The Dekkhan Land Securities Company, Limited," for the purpose of making an experiment upon a limited scale and within a limited area; it is hereby enacted as follows:—

1. This Act may be called "The Dekkhan Land Securities Act, 1882;"

It extends to the whole of the Bombay Presidency,

And it shall come into force on the passing thereof.

2. Upon the passing of this Bill it shall be competent to certain persons to form themselves into a Limited Liability Company under the provisions of the Indian Companies Act X. of 1866, and after compliance with the provisions of that Act as to registration and all other requirements therein contained, the said persons shall constitute and form "The Dekkhan Land Securities Company, Limited," having a head office in Bombay, and a branch in the town of Poona, and if necessary with branches in other towns.

The Capital of the said Company shall not be less than Rupees Two Lakhs, which may from time to time be increased at the dis-

cretion of the Company, subject to the limitations and requirements contained in the Indian Companies Act X. of 1866. The said capital shall be in shares of Rs. 100 each, of which Rupees ten per share or any larger sum shall be paid up on allotment as the Company may determine. The balance of each share shall be payable from time to time as may be determined pursuant to the provisions of the said Indian Companies Act.

The object of the Company shall be to improve the position and means of agricultural classes in the Dekkhan.

3. The business of the Company shall include :—

(1) the making of advances upon the security of immoveable property, or of rates and taxes levied by competent authority ;

(2) the issuing of mortgage debentures charged upon the aggregate securities thus created and upon the entire subscribed capital of the Company ; and

(3) the undertaking to act as agents of Government for the purpose of making advances of money for agricultural improvements under the "Land Improvement Act, 1871," upon such terms as may be agreed upon between Government and the Company.

4. It shall further be lawful for the Company to undertake the Agency mentioned above in Clause (3) of the immediately preceding section, on Government guaranteeing the issue of a minimum sum of lakhs of mortgage debentures, instead of providing cash for making advances for the said agricultural improvements.

5. The mortgage securities shall be deposited by the Company with such officer of the Registration Department as Government may appoint, and registered in that office, and must be so deposited before the mortgage debentures can be issued. Each mortgage debenture must be endorsed and registered by the said officer before it can be issued, and the said officer shall not permit the issue of debentures at any one time in excess of the aggregate amount secured by the then registered securities.

6. The word Agriculturist for the purposes of this Act shall be taken as defined in "The Dekkhan Agriculturists' Relief Act, 1881."

7. All advances made to agriculturists under this Act shall be treated as advances for agricultural improvements under "The Land Improvement Act, 1871," and shall be recoverable as such advances, subject always to the prior claims of Government.

8. All applications made and documents executed under this Act shall be exempt from stamp duty and registration fees.

9. Subject to the approval of Government the Company shall have power to frame and from time to time to modify general rules for the appointment and removal of all officers, for prescribing forms and proceedings, and generally for all matters requisite for effecting the objects of this Act, such rules not being inconsistent with the provisions of this Act. All such rules shall be published in the Local Government Gazette at least 3 months before they are brought into force.

STATEMENT OF OBJECTS AND REASONS.

The fact that the agricultural classes of the Dekkhan are in a state of chronic and ruinous indebtedness, is now universally admitted. The effects induced by this state, and the consequences resulting therefrom may be read in the report and appendices of the Dekkhan Riots Commission; of the Famine Commission of 1877-78; and various other official publications.

To help a needy ryot has been the policy of the Law ever since the enactment of the Elphinstone Code: (Regulation 17 of 1827, Section 13). The advances thus made by Government have been variously known as *tuccavi, takavi* and *tagai, i. e.* money supplied to support. The recovery of these advances has always been a cause of anxiety and the system has never proved attractive or successful.

In 1871 was first passed Act XXVI. entitled "An Act to consolidate and amend the law relating to advances of money by the Government for agricultural improvements."

Its object was somewhat more extensive than that of merely helping individuals. Extension of cultivation, improvement of machinery, the building of agricultural works, were sought to be effected by its agency. The two measures may thus be compared in their objects to what in France would be called "*Credit Foncier*" and "*Credit Agricole.*" This latter Legislative provision has however not proved more successful than the former.

The Bombay Administration report for 1875-76 thus reports on the latter measure:—

"A table accompanies showing the sums expended to encourage agricultural improvements in various parts of the Presidency. The money is advanced on good security at interest generally of 6¼ per cent per annum, is repayable over a series of years, and is in most instances borrowed for the purposes of well-digging. But there is not always a readiness to take advantage of the liberality of Government."

This is variously accounted for by various authorities. The report goes on to say:—

"The people of India have so long regarded their rulers as persons to be avoided, as far as possible, that it is not to be wondered at few care to be indebted to the Government. After the recent floods at Ahmedabad Government sanctioned the advance of a lakh of Rupees to poor cultivators, without interest; but the Collector reports no one availed himself of the offer, though his assistant, Mr. Lely, thinks that indirectly it did good, as "a great many applications, though favourably received, were withdrawn before the money was disbursed, and the most probable explanation is that the Banias, when they found there was danger of their clients slipping into the hands of a much more powerful creditor, offered them the accommodation which they had before refused;" and it is notorious that the sowcars everywhere use their endeavours to prevent a respectable ryot applying for tuccavi as these advances are called, and there are few ryots in a position to offend their banker. Mr. Sheppard, Collector of the neighbouring District of Kaira, says he visited a village on the Sabarmati that had repeatedly suffered from floods, and had at last been

rebuilt on a new and higher site, but which, last season, was again washed away. He found all hands at work cheerfully repairing the damage done, which was very considerable, and being desirous of helping those who were thus helping themselves, and apprehending that the series of disasters which had overtaken these poor people must have ruined their credit, he offered tuccavi on somewhat liberal terms and instructed his subordinates not to insist too rigidly on security for advances really necessary. "But," he writes, "I could not compete with the sowcars, even at the odds of no interest against 12 per cent." The people said they preferred getting assistance from those with whom they had always dealt, and the Collector found it useless to press aid which it was "not the custom of the country to accept." Mr. Pratt from Surat states that there is a "general unwillingness of the ryots to borrow from Government." Mr. Ashburner, C.S.I., sums up the position as follows:—"I do not think the Land Improvement Act will be of much advantage to the present generation of cultivators; they are too apathetic and already too deeply involved in debt to take advantage of a loan from Government. They object to the tedious formalities before the advance can be obtained and the rigid terms by which repayment is required. When a sowcar makes an advance to a cultivator his great object is to evade repayment. If the cultivator is tolerably well-to-do, the sowcar is content to let the debt run on from year to year at 36 per cent interest, with renewals after every three years, to keep within the Statute of Limitation. This is the system the cultivator prefers. He does not understand the luxury of being out of debt, and so long as he can obtain an advance when required to celebrate domestic events, is quite content to permit the sowcar to cheat and plunder him—in fact, what we call extortion and usury is only what he has been accustomed to all his life, and his fathers before him—he has no other idea of business. The sowcar is indispensable to him; and if we had not interfered to reduce the period of limitation, the relations between the sowcar and the cultivator would have been of a more amicable nature."

Regarding the failure of the same Act, the Famine Commissioners observe:—

"The evidence we have received regarding the working of this Act (XXVI. of 1871) renders it unquestionable that it has failed to

realise the intention of promoting improvements, and that there is a very general reluctance to make use of its provisions. The sums which have been advanced under the Act are extremely small, and bear no proportion whatever to the need which the country has of capital to carry out material improvements. This result is alleged to be due to several causes, among which the following are the most prominent: The obstacles created by inefficient native subordinates, to whom the granting of such advances gives extra trouble; the delay and expense of the initial procedure, under which the first application has to be stamped, the bond for repayment stamped and registered, and a minute and troublesome enquiry has to be made into the nature of the applicants' tenure and its value; the necessity of paying interest, which is usually fixed at 6¼ per cent. per annum; the small number of years over which repayment may be spread, and the consequent largeness of the annual instalments; the early date at which they begin to fall due, even before the improvement has begun to realize a profit; and the rigidity of the rules for punctual repayment."

In these circumstances it has been suggested to me from various quarters that a Bank or Banks established in the Dekkan, with limited liability and empowered to issue their own debentures up to the amount of their *subscribed* capital, plus the total amount of mortgages held by them could, in the present state of agricultural credit, be tried with success if they were managed economically, and if they were empowered to collect their dues through the local Revenue machinery, whenever compelled to resort to seek its aid.

The bank or banks could lend at maximum of 9 per cent to solvent cultivators on the mortgages of their holdings or to municipal bodies on the security of their rates and taxes. The securities would be deposited with the District Registrars and the Debentures likewise registered before issue.

It would lend to agriculturists for all the purposes mentioned in the Act.

In return for all these services, all the assistance which we propose to ask from the State is what is stated above; and as the

direct object of these institutions is to restore the channels of credit; to revive the confidence of the moneyed classes; and especially to help the Revenue system of Government by strengthening the position of the cultivating classes, it can hardly be said that any undue advantages are hereby asked for a purely commercial speculation. Indeed the Famine Commissioners themselves would seem to have come to the conclusion that the assistance of Government could be very properly given for such an object as is intended to be accomplished by this Act.

The Commissioners say on this subject as follows :—

"However just may be the terms of abhorrence applied to the 'Marwari,' or foreign usurer, it must be remembered that he is the product of a diseased condition of the community. The like condemnation must not be extended to the village banker of the better class, with whose useful services the rural communities of India have at no time been able to dispense. Any violent interference with the egitimate business of the rural banker would be disastrous, as it would result in the calling in of all agricultural loans, and the transfer of this capital to some other field of investment. The State should rather assist him in his transactions so far as they are lawful, should afford additional facilities for the recovery of reasonable claims, and should thus induce him to make loans at a lower rate of interest than that which now prevails, under the custom established under native rule when the security was very inferior. The aim of all remedial measures as regards the landholder should be to make his dealings with his banker fair and open, and while protecting him from extortion or oppressive measures of coercion, to constrain him to pay his just debts to the full extent of his means, but by less cruel and ruinous expedients than imprisonment or the sale of all he possesses. The means available to these ends are cheap and accessible courts which shall give full consideration to the equity of every claim and a simple method of recovering debts."

[Report : Part II. p. 131 para. 6]

In paragraph 20 of the same report, the Commissioners observe :—

"As a supplement to cheap and accessible Civil Courts, the assistance of the Revenue officials in the repayment of agricul-

tural debt is probably the greatest benefit to both debtor and creditor which the Government is able to offer." This is asked for in the Bill in the matter of recoveries. As regards stamps and registration, as the body of customers will be agriculturists and as the Government has already to a great extent dispensed with these charges in matters relating to such persons, the bank's dealings should, it is proposed, be placed on the same footing ; otherwise both these charges will be only imposed as additional burdens on the same people whom it is the object of the proposed enactment to help. It is also to be noted that by the proposed arrangement Government will be direct gainers; because, with a diminished strain upon their establishments, they will be able to carry out on a suitable scale their policy of advancing capital to the agricultural classes: if the money is obtained on guaranteed mortgage debentures, the local cash balances will not be drawn upon as under the present system ; while the chance of loss will be much smaller when Government deal with a responsible Company instead of depending upon the individual solvency of a large number of peasant debtors.

V. N. MANDLIK.

19*th June*, 1882

EDUCATION IN INDIA.

[STATEMENT SUBMITTED TO THE EDUCATION COMMISSION.]

1. Please state what opportunities you have had of forming an opinion on the subject of education in India, and in what province your experience has been gained ?

Answer 1 :—I have been connected with the Educational Department of this Presidency for more than 34 years. For two years I acted as a half-time Teacher in the School and College Departments of the Elphinstone Institution ; as an Honorary Teacher of an Infant School, and an Honorary Superintendent of Girls' Schools ; as one of the first (Honorary) Teachers of the first Sindhi Normal Class at Kurrachee ; I have also had opportunities of inspecting many of the indigenous schools in Sindh and Kutch, while employed in the Political Department under Sir B. Frere in Sindh, and the late Major-General Sir S. LeGrand Jacob in Kutch. For about six years I was employed as one of the first visitors (now Deputy Inspectors) of Government schools for the districts of Thanna and Colaba, and afterwards the Island of Bombay. I have also acted as a Curator of the Government Depot for some years. In connection with the Bombay University, I have acted as an Examiner for several years ; I have been a Syndic in Law since 1873-74 ; and a Fellow of the University since the year 1862. During my travels in other parts of this Presidency, as well as in Upper India, I have often made careful inquiries into the state of Popular Education, but in the following pages I shall limit myself to my experience of Western India.

generally. As a Deputy Inspector of all the Anglo-Vernacular Schools in the City of Bombay, I have made a regular survey of the indigenous schools throughout the districts under my charge, including the City of Bombay. I am not aware whether these surveys have since been continued. What I have stated is chiefly as regards my connection with the Department of Public Instruction. The question is made somewhat indefinite by the use of the term *education*. And I wish to make this clear at the outset; because my observations on this head in the beginning will give more insight into my remarks hereafter. I admit that the instruction imparted in our schools contributes to a certain degree towards our education. But, except in this sense, the one must not be confounded with the other. Roughly speaking, education is the formation of habits; the making or unmaking of the moral and intellectual individual, in other words, the formation of a manly character fitted "to work out the best development possible of body and spirit—of mind, conscience, heart and soul." It is by good example and quiet training that this is done. It is in perseverence and energy that the successful result of education is to be found. The work, therefore, necessarily begins with the cradle; and it is home education and home example that are most favorable for the thorough culture of the individual. In our schools there is no discipline apart of the classes, and the training stops short at the very time of day when it ought to begin. Mixing with one's 'fellows,' competing at games and sports, and in examination-halls, can only act and does act on particular sides of human nature. Even in our Colleges there is no healthy discipline apart from the lecture hours,, and whatever faults we see now (and it is of no use concealing them) are, I take it, largely due to that cause. Dr. Murray Mitchell recently attacked the present Principal of the Elphinstone College—Mr. W. Wordsworth—for having alarmed the native public by the promulgation of his answers. I take leave to say that Mr. Wordsworth's replies have rather had a reassuring effect. The alarm has been taken, and it is still widely spread by this Commission of enquiry itself, and by all sorts of enactments that (looking to the past) may be surely expected to follow. For, given a certain number of human ills, the prevailing Anglo-Indian remedy has been more acts and additional cumbrous departments and heavier taxation. If this is averted,—it can be only due

to the statesman who now rules over this Empire. But looking to the facts that have now transpired, this enquiry itself is largely due to propagandist outside agitation in England, which is what we have to fear most. I have alluded to this episode for two reasons. First, to show what I mean by good example in education, and what education is understood to be in certain quarters. It is to men like Professors Harkness and Patton, and latterly to men like Professor W. Wordsworth, that we owe the solid work of education. And if we get, as Dr. Mitchell puts it, "English and impudence" besides, I ask him to look nearer home, and not attack superior men like Mr. Wordsworth, who are already so few. Our first teachers were selected by the Hon. Mr. Elphinstone. Since then we have sometimes got good men; otherwise Mr. Justice West's 'remarks' (see page 8) are just :—"A professor is a professor :—what of is a secondary consideration." What wonder, then, we should often go wrong, when we don't get good teaching and good example ? Man is merely a bundle of habits; and it is *home* that is best calculated to make him so. Where that is wanting, its place can be hardly so well supplied anywhere else. It is in the sense indicated in the above remarks that I understand the terms *education*, as opposed to *instruction* imparted in the schools. The measures of Government itself are a powerful element in education; and they affect society in this country especially by setting a good or a bad example. Thus we are taught to defend the laws of political economy, and of the mischiefs arising from interfering with the laws of demand and supply. The present state of the Dekkan and the laws which now govern, *post facto*, the operations of credit in that unfortunate country, prove vividly how one single measure may deal a fatal blow to the moral and political condition and education of the people. Each Presidency will supply numerous other examples to the earnest inquirer. Our own furnishes a host of them within the last decade. In the Department of Public Instruction itself, unless the relations of the heads with their subordinates are thoroughly cordial, the value of all school teaching is destroyed. For example, a native graduate or an under-graduate goes to call on an officer of the Department and is met on the verandah with a *kya mangta hai ?* (what do you want ?). This does more mischief than the good done by ten schools. One such example permeates through the different strata, and converts the

whole department into a dead machine, instead of a vivifying sympathetic human agency.

2. Do you think that in your province the system of primary education has been placed on a sound basis, and is capable of development up to the requirements of the community? Can you suggest any improvements in the system of administration or in the course of instruction?

Answer 2:—I do not think that the system of Primary Education is still on a sound basis. Nor do I believe that for many years to come would it be practicable to work out a complete system of popular instruction suited to the different classes of Indian society. In my opinion it would be better to talk of Primary Instruction instead of Education, because I think the work of Education is a very extended one, and really begins or ought to begin at home, and it can only advance on a sound system along with the progress of the community generally. As regards this Primary Instruction, I believe it must grow along with the growth of the community, and the system will be satisfactorily settled only when the people of India are themselves sufficiently advanced by higher education to undertake the work. I think it was a mistake to have abolished the old Board of Education, in the first instance, in 1855. Our first Director of Public Instruction, Mr. Claudius J. Erskine, was a very superior man, and his views were so catholic, and his administration so sympathetic, that the effects of the abolition of the Board were not at once felt. But since then the Department has gradually become a mere machine. The school masters are mere no-bodies. There is a huge Inspectorial staff; letter-writing and tables have increased; the old School Committees have fallen into decay, and have lost all influence and authority; and the department is now a large, detached mass of the executive Government. I will give one or two examples. The head-master of the Ratnagiri Marathi School No. 1 was emphatically known through the town as the Guruji (the great preceptor), and his social standing was equal to that of the highest native officers of Government at the station—viz., the Dufterdar, the Principal Sadr Amin, Mamlatdar, Deputy Collector, or Deputy Educational Inspector. At present he is worse off than a common *Karkun*, and this is in my opinion due to the working of the Department. I think Inspectors on high salaries of 1,200 to 1,600 Rupees

a month are not required, and the number of deputies also is very large. The local Committees should have more power, and superior school masters should be encouraged by being made *ex-officio* Sub-Inspectors for their *Talukas*. A Central Board should be created at the Presidency to supervise the whole machinery.

The following answer by Mr. Nowrozjee Furdoonjee to the above question will deserve consideration, especially in regard to mechanical instruction, and the adoption of some works in morals and ethics. I think the French course too ambitious and not suited at present to the state of the masses in India, and far beyond their means.

"*Answer* 2:—The scope of primary education is thus defined in the first clause of the Act passed this year by the French Legislature:—

'Primary education comprises moral and civil instruction, reading, writing, geography, particularly that of France, history, especially that of France up to the present day, some notions of law and political economy, the elements of natural, physical and mathematical science, their applications to agriculture, health, industrial arts, manual labour, and uses of tools of princial crafts, the elements of drawing, modelling and music, gymnastics, for boys military drill, for girls needlework.'

This provision might be modified and adapted to the circumstances of India, and should, I submit, form the basis on which primary education should be conducted by the State in this country.

The improvements which I venture to suggest in the system of administration and the course of instruction are the following:—

(*a*) Readiness and rapidity of calculation, proficiency in mental arithmetic and native method of book-keeping and accounts, subjects to which great attention has been paid in the indigenous schools, but they have been displaced by the course of instruction prescribed in Government schools and imparted from text-books which are not quite adapted to the capacity of the pupils.

(*b*) The introduction of a systematic course of instruction in the principles of morality and ethics. I am of opinion that this is a great desideratum which, if supplied, will be attended with beneficial results.

(*c*) The impartment of technical education for qualifying the people for acquiring the practice of useful trades, industrial arts, and professions. But I am sorry to learn that this important question does not come within the scope of the inquiries entrusted to the Commission.

3. In your province, is primary instruction sought for by the people in general, or by particular classes only? Do any classes specially hold aloof from it; and if so, why? Are any classes practically excluded from it; and if so, from what causes? What is the attitude of the influential classes towards the extension of elementary knowledge to every class of society?

Answer 3:—I believe primary instruction is only sought for by particular classes. To many classes, existence itself is a struggle; for the wants of the body, although light in this country, must be provided for above all other things; and *lakhs* of people, if not tens of *lakhs*, are simply struggling to keep body and soul together. To them and their children school instruction is practically non-existent, and I am not sure that any artificial inducements can be successfully applied to the help of such classes.

I am not sure whether the term *influential classes* has been properly used in this question; If it is meant to signify the richer classes, these are indifferent in regard to the extension of elementary knowledge. Besides, if secular knowledge is all that is intended by this question, there is no class, to my knowledge, opposed to the extension of elementary knowledge to every possible class in India.

4. To what extent do indigenous schools exist in your province? How far are they a relic of an ancient village system? Can you describe the subjects and character of the instruction given them, and the system of discipline in vogue? What fees are taken from the scholars? From what classes are the masters of such schools generally selected, and what are their qualifications? Have any arrangements been made for training or providing masters in such schools? Under what circumstances do you consider that indigenous schools can be turned to good account as part of a system of national education, and what is the best method to adopt for this purpose? Are the masters willing to accept State aid and to conform to the rules under which such aid is given? How far has the grant-in-aid system been extended to indigenous schools, and can it be further extended?

Answer 4:—Indigenous schools exist in nearly all large towns and villages, where there is a mercantile or literary population. I have examined hundreds of these in the Thanna and Colaba collectorates, in Sindh, and in Bombay. The general character of instruction is inferior. It consists of reading and writing the ordinary

business character of the province; the first four rules of arithmetic and sometimes simple and compound rule of three; some general knowledge in regard to the Hindu calendar, and a few hymns and practical pieces. The multiplication and other tables are also taught in these classes. I believe this description applies *mutatis mutandis* to Marathi and Guzerathi schools. With regard to the Mahomedan schools, I have seldom seen them go beyond the *Korân*. Whether they form a relic of an ancient village system I have not yet been able to determine. The fees are either in money or in corn, with presents on certain holidays. I do not know in what position the Government Department of Public Instruction now stands to these schools, and what progress has been made towards utilizing them as a portion of a general system of instruction as was contemplated by Mr. Claudius Erskine, the first Director of Public Instruction in this Presidency. I am still of opinion that if properly handled, they will form a useful element in any scheme of popular instruction.

5. What opinion does your experience lead you to hold of the extent and value of home instruction? How far is a boy educated at home able to compete on equal terms, at examinations qualifying for the public service with boys educated at school?

Answer 5:—In my reply No. 1, I have indicated the value of home instruction and home education. The perfect cultivation of the human mind is a work of ages, and the discipline we have inherited is a very rich and old treasure. In my view, home instruction is very valuable, and a boy properly educated at home can compete on equal terms at such examinations as are here conducted. When sufficiently grown, I would send a young man to a College also for higher instruction, and for laying the foundation of that higher education which begins when a young man has taken his degree.

6. How far can the Government depend on private efforts, aided or unaided, for the supply of elementary instruction in rural districts? Can you enumerate the private agencies which exist for promoting primary instruction?

Answer 6:—I do not think that Government can at present depend very much on private efforts, except in such cities as Bombay, Poona, Ahmedabad, and the like. Private indigenous agencies cannot at present be depended upon for this work, and the

only other private agency which exists, namely, that of the Missionaries, is not, in my opinion, suited for the purpose of carrying on the work of national instruction. In regard to the impropriety of giving assistance to Christian Missionaries from the public purse, I entirely agree with what has been said by Messrs. Dadabhai Naorozji and Nowrozji Furdoonji. In this Presidency, a very promising, and so far a successful, experiment has been begun in Poona by Mr. Bal Gangadhar Tilak and other graduates of our University, who have been imparting public instruction in English of a high order in Poona. They have achieved a fair measure of success amidst a host of difficulties; and if their plans prosper, they will in time cover the whole Presidency with a network of schools of their own. I wish them every success; and I think they deserve every encouragement.

7. How far, in your opinion, can funds assigned for primary education in rural districts be advantageously administered by District Committees or Local Boards? What are the proper limits of the control to be exercised by such bodies?

8. What classes of schools should, in your opinion, be entrusted to Municipal Committees for support and management? Assuming that the provision of elementary instruction in towns is to be a charge against Municipal Funds, what security would you suggest against the possibility of Municipal Committees failing to make sufficient provision?

Answers 7 and 8:—Both these matters being closely connected, I treat them together. I think all primary schools can be advantageously administered by District Committees or Local Boards; and all Anglo-Vernacular Schools can be properly supervised by Central Committees at Suddur Stations; except in cases where the duties are proved to be neglected, I do not think the Educational Department should interfere. As a rule our Municipalities are poor, like ratepayers on whom they depend for their ways and means. The half-anna educational cess with a contribution from the public treasury ought to be the fund for supporting all schools and colleges.

9. Have you any suggestions to make on the system in force for providing teachers in primary schools? What is the present social status of village schoolmasters? Do they exert a beneficial influence among the villagers? Can you suggest measures, other than increase of pay, for improving their position?

Answer 9 :—This ought to be done by the Central Board. Unless the position of these teachers is improved, very little good can be done by the whole superstructure of the Department, however imposing it may be.

10. What subjects of instruction, if introduced into primary schools, would make them more acceptable to the community at large, and especially to the agricultural classes ? Should any special means be adopted for making the instruction in such subjects efficient ?

Answer 10 :—I agree with Mr. Nowrozji in his answer No. 10. I think these schools should be somewhat like the old indigenous schools with new studies added. Popular poetry should be added to the course.

11. Is the vernacular recognised and taught in the schools of your province the dialect of the people ? and if not, are the schools on that account less useful and popular ?

Answer 11 :—Yes, it is. The second half, therefore, needs no reply.

12. Is the system of payment by results suitable, in your opinion, for the promotion of education amongst a poor and ignorant people ? 13. Have you any suggestions to make regarding the taking of fees in primary schools ? 14. Will you favour the Commission with your views, first as to how the number of primary schools can be increased, and, secondly, how they can be gradually rendered more efficient ?

Answer 12 :—I should say no decidedly. 13 :—This should be left to the local bodies entirely. 14 :—I have partly answered this question in my replies to questions 2 to 4. They can be only rendered more efficient by interesting the people themselves in their own schools. I agree generally with Mr. Justice West's remarks on this group.

15. Do you know of any instances in which Government educational institutions of the higher order have been closed or transferred to the management of local bodies, as contemplated in paragraph 62 of the Despatch of 1854 ? and what do you regard as the chief reasons why more effect has not been given to that provision ?

Answer 15 :—None have been closed or transferred to local management.

16. Do you know of any cases in which Government institutions of the higher order might be closed or transferred to private bodies, with or without aid, without injury to education or to any interests which it is the duty of Government to protect?

Answer 16:—Wherever the people can prove their aptitude to undertake this work, they may be entrusted with the charge of higher education; but I know of no instances in which this can, in my opinion, be immediately done.

17. In the province with which you are acquainted, are any gentlemen able and ready to come forward and aid, even more extensively than heretofore, in the establishment of Schools and Colleges upon the grant-in-aid system? 18. If the Government, or any local authority having control of public money, were to announce its determination to withdraw after a given term of years from the maintenance of any higher educational institutions, what measures would be best adapted to stimulate private effort in the interim, so as to secure the maintenance of such institutions on a private footing? 19. Have you any remarks to offer on the principles of the grant-in-aid system, or the details of its administration? Are the grants adequate in the case of (*a*) Colleges, (*b*) Boys' schools, (*c*) Girls' schools, (*d*) Normal schools? 20. How far is the whole educational system, as at present administered, one of practical neutrality, *i.e.* one in which a school or a college has no advantage or disadvantage as regards Government aid and inspection from any religious principles that are taught or not taught in it?

Answer 17:—I know of no such persons. Our public college have been handsomely assisted by private benefactors, but it is too much to expect that we should do here in such a poor country what has taken the monarchs, the nobility and gentry of Great Britain itself several centuries to accomplish. 18:—What would follow has been well described by Mr. Justice West and Mr. Wordsworth; and in that I generally concur. 20:—I think the present system is one of perfect neutrality; if it errs, and I think it does so, the error is in favour of the Mission schools, so that I do not see any reason why they should complain; the proceeds of public taxation are now being placed at the disposal of schools the very object of which is to destroy the religious creeds of the natives of India. I would rather give no grants-in-aid at all than give them to schools or colleges of this description.

21. What classes principally avail themselves of Government or aided schools and colleges for the education of their children? How far

is the complaint well-founded, that the wealthy classes do not pay enough for such education ? What is the rate of fees payable for higher education in your province, and do you consider it adequate ?

Answer 21 :—This has been partly answered before. More is I think paid for education in this country than even in Europe and America : (See answers by Mr. Justice West and Principal Wordsworth, and Mr. Lethbridge's Address before the National Indian Association in London : No. of the Journal for August 1882.) The fees now charged in Government colleges are very heavy. The Elphinstone College has a very large private endowment, and I think the fee ought to be reduced.

22. Can you adduce any instance of a proprietary school or college supported entirely by fees ?

Answer 22 :—Yes, I know at least one such flourishing school at Poona, conducted by Mr. Tilak and his colleagues ; and I think there are two schools conducted by Parsi gentlemen in Bombay.

23. Is it in your opinion possible for a non-Government institution of the higher order to become influential and stable when in direct competition with a similar Government institution ? If so, under what conditions do you consider that it might become so ?

Answer 23 :—Yes. I believe there are such institutions in Calcutta ; and the Poona School soon promises to grow into a great institution. It deserves public support. .

24. Is the cause of higher education in your province injured by any unhealthy competition ; and if so, what remedy, if any, would you apply ?

Answer 24 :—I am in favour of competition in such matters with such limitations as to the making of grants-in-aid as I have already stated. The larger the number of schools and colleges, the better for all, because I hold that ultimately the work of education should be carried on by the people themselves without any extraneous assistance. I think also that it should not be on one model, but there should be as great a diversity in this matter as we find in nature.

25. Do educated natives in your province readily find remunerative employment ?

Answer 25:—The words remunerative employment are indefinite. But I believe that, on the whole, they do find employment suited to their capacities at present. It is, however, getting more difficult every year to find remunerative employment, and this must be so, if the higher ranks of the subordinate service become more and more inaccessible to the natives of the country.

26. Is the instruction imparted in secondary schools calculated to store the minds of those who do not pursue their studies further, with useful and practical information?

Answer 26:—I think in all schools which propose to impart higher instruction with the view of passing their students for the University Examinations, their course of instruction should not be limited as is here proposed. It is in technical and mercantile schools that the information indicated above should be systematically given.

27. Do you think there is any truth in the statement that the attention of teachers and pupils is unduly directed to the Entrance Examination of the University? If so, are you of opinion that this circumstance impairs the practical value of the education in secondary schools for the requirements of ordinary life? 28. Do you think that the number of pupils in secondary schools who present themselves for the University Entrance Examination is unduly large when compared with the requirements of the country? If you think so, what do you regard as the causes of this state of things, and what remedies would you suggest?

Answer 27 and 28:—I think the statement is true; and I am of opinion that the present entrance course requires to be revised and reduced in extent. Unless this is done, our High Schools are likely to suffer by employing all their strength on their highest classes. I do not think the number is unduly large. But as technical education is neglected, I think the numbers are likely to increase to a somewhat injurious extent. But if that be an evil, I can only leave it to be corrected by the operations of natural laws.

29. What system prevails in your province with reference to scholarships; and have you any remarks to make on the subject? Is the scholarship system impartially administered as between Government and Aided schools. 30. Is Municipal support at present extended to grant-in-aid schools, whether belonging to Missionary or other bodies; and how far is this support likely to be permanent?

Answer 29 :—I think all scholarships endowed by the State should be connected with State Schools. In the Elphinstone and Grant Colleges, there are large funds specifically limited by those who raised them to the students of those Colleges. 30 :—Unless the ratepayers expressly authorize such a disbursement, their money should not be expended in giving assistance to schools which are not under their control.

31. Does the University curriculum afford a sufficient training for teachers in Secondary schools, or are special Normal schools needed for the purpose ?

Answer 31 :—It does as far as it goes ; but for higher schools there ought to be Normal schools, with a good staff, and a liberal supply of educational appliances.

32. What is the system of school inspection pursued in your province ? In what respect is it capable of improvement ? 33. Can you suggest any method of securing efficient voluntary agency in the work of inspection and examination ?

Answers 32 and 33 :—I think the present system is cumbrous ; there should be no Inspectors at all ; but there ought to be one Deputy for every large District with such assistance as he may require. The 1st Grade High Schools should be inspected by the Director, and the others by the Zilla Committees, the Deputy Inspectors acting as Assessors. I think this can be easily done, and it will make the Department less expensive and cumbrous.

34. How far do you consider the text-books in use in all schools suitable ? 35. Are the present arrangements of the Education Department in regard to examinations or text-books, or in any other way, such as unnecessarily interfere with the free development of private institutions ? Do they in any wise tend to check the development of private institutions ? Do they in any wise tend to check the development of natural character and ability, or to interfere with the production of a useful vernacular literature ?

Answers 34 and 35 :—I think the State Depots ought to be abolished ; and the compilation and supervision of text-books should be placed in the hands of Central Committees assisted by the officers of the Department. The present text-books require considerable improvement. This is a subject which by itself requires careful

consideration and cannot be disposed of satisfactorily without a more extended and systematic treatment than I can now enter into.

36. In a complete scheme of education for India, what parts can, in your opinion, be most effectively taken by the State and by other agencies? 37. What effect do you think that the withdrawal of Government to a large extent from the direct management of schools or colleges would have upon the spread of education, and the growth of a spirit of reliance upon local exertions and combination for local purposes? 38. In the event of the Government withdrawing to a large extent from the direct management of schools or colleges, do you apprehend that the standard of instruction in any class of instructions would deteriorate? If you think so, what measures would you suggest in order to prevent this result? 39. Does definite instruction in duty and the principles of moral conduct occupy any place in the course of Government colleges and schools? Have you any suggestions to make on this subject?

Answers 36, 37, 38, and 39:—I agree with the spirit of Mr. Wordsworth's replies Nos. 13, 14 and 15. In the present state of the country, the sudden withdrawal of Government will produce disastrous results. The very formation of this Commission has inspired a vague apprehension that the Government intends to make over all its Educational institutions to Missionary bodies; and that has moved the native public to a very considerable extent.

Rightly or wrongly the people do not trust Missionary bodies. And although their educational assistance is availed of by the poorer classes, it is only because they cannot defray the present high fees in Government institutions. A good deal has been done by the people; but I fear we must wait a good long while before we can have our own Oxfords and Cambridges, at least on this side of India.

40. Are any steps taken for promoting the physical well-being of students in the schools or colleges in your province? Have you any suggestions to make on the subject?

Answer 40:—Something has been, of late, done in this direction, but not satisfactorily. I think a book containing a detailed description of all the games and sports now played in the country, profusely illustrated, should be prepared and published by the Department. I had suggested some such measures many years ago. Swimming and riding ought to be more generally encouraged. There has been a decided falling off in this respect during the last 30 years;

and the result has been hurtful to the cause of education generally. Some years ago my attention was drawn to an excellent work, entitled "Philosophy in Sport made Science in Earnest." I should like some such attempt made by our Educational Department to popularize this branch of education in this country. There is no lack of energy; what is wanted is proper direction and guidance.

41. Is there indigenous instruction for girls in the province with which you are acquainted; and if so, what is its character?—42. What progress has been made by the Department in instituting schools for girls; and what is the character of the instruction imparted in them? What improvements can you suggest?—43. Have you any remarks to make on the subject of Mixed Schools?—44. What is the best method of providing teachers for girls?

Answers 41 and 42:—I have been connected with a private association called the "Students' Literary and Scientific Society" in Bombay, which has instituted and carried on its own schools for nearly 34 years (see Note on Education by Mr. Dadabhai Naoroji, pp. 20 and 21). I have been connected with that Society ever since its foundation and up to this day, and I consider the vernacular education as there imparted is quite sufficient for our people generally. I agree with what fell from His Highness the Maharaja of Travancore at the Kumbhakonum College in this respect (see *Hindu Patriot*, April 3rd, 1882, page 163). 43:—I object to mixed schools, which are entirely unsuited to our community and its circumstances. 44:—The normal schools are recommended; but they have not been of much practical use till now, as far as I know.

45. Are grants to Girls' schools larger in amount, and given on less onerous terms, than those to Boys' schools; and is the distinction sufficiently marked? 46. In the promotion of femal education, what share has already been taken by European ladies; and how far would it be possible to increase the interest which ladies might take in this cause?

Answer 45:—I believe there is a distinction, and a marked one. Until the whole organization is made really more popular, I cannot advise any change. 46:—In Bombay itself a movement was organized by the late Professor Patton, Sir E. Perry, Captain (now Colonel) French, and Mr. P. W. LeGeyt. The last gentleman was the Secretary. This was in 1849, when I was officiating as the Secretary of the Marathi and Guzerathi Schools. It was, however, not

properly appreciated by the people, and had to be given up. Since then I have known of no such organization in this Presidency, though I have been engaged in that work, as Secretary of the Students' Literary & Scientific Society, from 1861-62 upto 1873-74, and as President until 1881-82, and have done active work of weekly inspection for years, and superintended the Marathi Schools, and also the Guzerathi ones while they were in our charge.

47. What do you regard as the chief defects, other than any to which you have already referred, that experience has brought to light in the educational system as it has been hitherto administered ? What suggestions have you to make for the remedy of such defects ?

Answer 47 :—The cultivation of Sanskrit as Sanskrit has been neglected. I refer to the remarks on this subject in Adam's Reports on Vernacular Education in Bengal and Behar: Calcutta, 1838. (Reprinted by Rev. Mr Long, 1868). It is true that in the fight that has been going on between the right media of instruction, this subject has been in a measure laid aside. But Sanskrit, even under political disabilities, has been and is still the *lingua franca* of the learned Aryas in all parts of India. In this Presidency the old college at Poona did something to help the people in this respect. It was supported from a Fund which in its inception was, as I understand it, a purely private endowment for a certain purpose. In 1851-52, when the new college was opened, a mere shadow was left and the substance swept away. One can only smile at attempts to keep alive traditions of old Sanskrit learning by employing scholars to note down "and to fix in writing" what must otherwise pass away: (See Preface to Dr. Keilhorn's Translation of the Paribhâshendu Shekhara: Bombay 1874, p. xxv.) There is no royal road to knowledge yet discovered. Learned Shastris and Pandits will rise, if Sanskrit study is properly encouraged. I am not speaking of the Pandits as he is now understood. The story of the word Pandit itself shows our degradation in this matter. A Hindu Munshi engaged in teaching languages to young European officers first began to be styled a Pandit. It was a term of respect and nothing more. It is now being applied chiefly by the Europeans and some members of our community (who ought to know better) to any body and every body they please. This is one of the many indices of our moral and social degradation. If the Commission can devise

some mode of arresting such decay, and infuse new vigour into this branch of learning, they will do more to popularize education than any other single measure that I can think of. I am sorry I have no time to enter into other subjects.

48. Is any part of the expenditure incurred by the Government on high education in your province unnecessary ?

Answer 48:—Except such as I have indicated before, no reduction can be safely made. I think our colleges are very poorly endowed. More funds and more qualified men are required. I say with deference, the Commission ought not to descend to cheeseparing in this department. The next step which must be taken by the Government—and it will have to be taken some day or other—is a Commission for reducing the overgrown expenditure of the Empire.* It will be a gigantic task ; but it must be done. Every new project gives us a new department ; and each department fights for its own life in obedience to the natural law of self-preservation. Things that can be done for a few rupees cost thousands. In encouraging literature itself, however, it has been so to a considerable extent. We are sending our Sanskrit books to be catalogued in Europe ! (Bombay Government Resolution No. 2053, 27th December 1881, Educational Department); and photolithographing incorrect MSS. by spending thousands. The Revenue, the Police the P. W. Department, and others are all magnificent and grand. And all at the expense of the people and their education—literary, moral, and political. As an example, fifteen months have passed in Bombay in thinking of transferring the schools to our Municipality which is quite prepared to take them up, and to manage them as efficiently at least as any department of the State. And yet, I say it with all deference, the authorities have not even yet made a stir. Bombay *can* work, and it has worked large and independent institutions and measures; and the excuse of saddling us with official dictators or chairmen is simply out of date in this City. Self-government must be self-Government or else it is a mere pretence not worthy of the present Government of British India. We can work our educational scheme, and we deserve at least a fair trial. I am opposed to the enactment of

* See amongst others a paper by Sir Charles Trevelyan, in the Journal of the East India Association, London, Vol. IV., pp. 290—315.

new laws—unless the *people* want them. Such are not required for the extension of education. The idea now seems to be—wanted Rs. 20,000, enact a new law and organize a new department. This is not a sound policy; it is neither Eastern nor Western; and I say, respectfully, it should be given up.

49. Have Government institutions been set up in localities where places of instruction already existed, which might by grants-in-aid or other assistance adequately supply the educational wants of the people?

Answer 49:—None to my knowledge.

50. Is there any foundation for the statement that officers of the Education Department take too exclusive an interest in higher education? Would beneficial results be obtained by introducing into the Department more men of practical training in the art of teaching and school management?

Answer 50:—No. My complaint is that more should be done. I do not think more men need be imported. What is needed is gradual, patient, and equable working. We must imitate nature; and work continuously and perseveringly in a proper course.

51. Is the system of pupil teachers or monitors in force in your province? If so please state how it works?

Answer 51:—It was introduced many years ago. I do not know whether it is kept up or not.

52. Is there any tendency to raise primary into secondary schools unnecessarily or prematurely? Should measures be taken to check such a tendency? If so, what measures?

Answer 52:—I think the Departmental working is getting too mechanical, as to destroy all life and originality.

53. Should the rate of fees in any class of schools or colleges vary according to the means of the parents or guardians of the pupil?

Answer 53:—No. It should be uniform, but it should be moderate.

54. Has the demand for high education in your province reached such a stage as to make the profession of teaching a profitable one? Have schools been opened by men of good position as a means of maintaining themselves?

Answer 54:—Some such schools have been opened; but I have no means of saying that the profession is successful financially.

55. To what classes of institutions do you think that the system of assigning grants according to the results of periodical examinations should be applied ? What do you regard as the chief conditions for making this system equitable and useful ?

Answer 55 :— I am opposed to grants, unless they are made to all schools alike, and on the condition that there is no dogmatic religious teaching of any kind whatever in these schools.

56. To what classes of institutions do you think that the system of assigning grants-in-aid of the salaries of certificated teachers can be best applied ? Under what conditions do you regard this system as a good one ?

Answer 56 :—See my answer to question 55.

57. To what proportion of the gross expense do you think that the grant-in-aid should amount under ordinary circumstances, in the case of colleges and schools of all grades ?

Answer 57 :—This is a matter of detail on which I cannot give an opinion at present.

58. What do you consider to be the maximum number of pupils that can be efficiently taught as a class by one instructor in the case of colleges and schools respectively ?

Answer 58 :—About 40 in either case: but in the highest college classes, the number must be more limited. I have taught for some time higher Mathematics in the Elphinstone College (*) to small classes, but would have easily taught much larger ones. The literary classes ought to be smaller than the science classes.

59. In your opinion should fees in colleges be paid by the terms or by the month ?

Answer 59 :—They should be paid by terms as at present.

60. Does a strict interpretation of the principle of religious neutrality require the withdrawal of the Government from the direct management of colleges and schools ?

Answer 60 :—No ; but in my humble opinion, wherever instruction is systematically given in religious dogmas, Government should not assist—whatever may be the school—Hindu, Mahomedan or Christian.

---

* Report of the Board of Education for 1851-52 (No. X.), App. XI., p. 43.

61. Do you think that the institution of University professorships would have an important effect in improving the quality of high education?

Answer 61:—We have not had much experience on the subject I think there is a striving for immediate results in this country. This should not be. Our work should be designed for all time, and not for the present alone.

62. Is it desirable that promotions from class to class should depend at any stage of school education, on the results of public examinations extending over the entire province? In what cases, if any, is it preferable that such promotions be left to the school authorities?

Answer 62:—No; promotion should be regulated by the Masters. Individuality should never be destroyed but encouraged. I fear the procrustean bed is now too much the rule of the department, and good boys are consequently discouraged.

63. Are there any arrangements between the colleges and schools of your province to prevent boys who are expelled from one institution, or who leave it improperly, from being received into another? What are the arrangements which you would suggest?

Answer 63:—This is a matter of detail on which the college authorities can speak, and which should be left entirely to the college authorities.

64. In the event of the Government withdrawing from the direct management of higher institutions generally, do you think it desirable that it should retain under direct management one college in each province as a model to other colleges; and if so, under what limitations or conditions?

Answer 64.—It would be a national disaster for Government to withdraw just now. For the rest I refer the Commission to Mr. Erskine's circulars quoted *in extenso* in the Bombay Report on Public Instruction for 1855-56, as very fair models for working a large educational scheme.

65. How far do you consider it necessary for European professors to be employed in colleges educating up to the B. A. standard?

Answer 65:—I think for teaching English idiomatically a born Englishman, or an *exceptionally* well-trained non-English Professor is necessary. For all other branches any qualified men will do. I am sorry there is no proper system for appointing Professors at present—either Indian or European.

66. Are European professors employed or likely to be employed in colleges under native management?

Answer 66:—Yes; for teaching English, and European history, languages, and philology—at least for some time to come.

67. Are the circumstances of any class of the population in your province (*e.g.*, the Mahomedans) such as to require exceptional treatment in the matter of English education? To what are these circumstances due, and how far have they been provided for?

Answer 67:—I do not think they are; it is an educational question. This is my decided answer, founded on past history and general principles. Politically, Government will do what may seem to them best; and that matter is at present beyond my jurisdiction.

68. How far would Government be justified in withdrawing from any existing school or college, in places where any class of the population objects to attend the only alternative institution on the ground of its religious teaching?

Answer 68:—Government ought not to withdraw for reasons which I have already explained in my above answer.

69. Can schools and colleges under native management compete successfully with corresponding institutions under European management?

Answer 69:—Yes, as they do now in Calcutta. I believe several schools in Bombay and Poona do the same.

70. Are the conditions on which grants-in-aid are given in your province more onerous and complicated than necessary?

Answer 70:—I have not got before me the results of actual working; but I know that in girls' schools conditions are imposed which are often impracticable.

N. B.—I am sorry pressure of work of all kind has made my answers more diffuse and lengthy than they should otherwise have been. And the same is the cause of delay in submitting this Paper for which I beg to apologise.

V. N. MANDLIK.

"*The Hermitage*," *Bombay*;
December 23*rd*, 1882.

LORD RIPON'S SCHEME

OF

LOCAL SELF-GOVERNMENT.

IS IT A LEAP IN THE DARK ?

Lord Ripon's Government passed certain resolutions last year, for the extension and consolidation of local self-Government in this country; and some officers are debating on the propriety of those measures. I begin with our own Presidency. The Government of Bombay is still thinking on the subject. Its resolution of 25th March 1882, thus begins:—

RESOLUTION:—The question of the further extension of the system of local self-Government in the Bombay Presidency is one of considerable difficulty. District and Taluka Local Fund Committees and Municipalities in this Presidency have already large funds at their disposal, over the expenditure of which they possess discretionary power, and it is doubtful whether those bodies as at present constituted, can advantageously be charged with the administration of other heads of expenditure.

If the bodies above-named are not properly "constituted," the best remedy, I apprehend, is to constitute them properly and set to work. Can they be so constituted? What does history say? I believe our village system has nowhere survived all the economic, social and political shocks so well as in Western India. Mountstuart Elphinstone (*a*), Grant-Duff (*b*), Sykes (*c*), and other authorities have fully described it. The village community with its 12 *alutedars*, and 12 *balutedars*, its *patels*, *chaughulas*, *chowdharis*, down to the *yeskars* (the village watchmen), constitutes an indigenous Municipality. It may not be quite modern. But there it is; and although it has been suffering from the ravages of time,

(*a*) History of India, 4th Ed., pp. 246, 247.
(*b*) History of the Marathas, Vol. I.
(*c*) Lieutenant-Colonel Sykes' paper on the Deccan Land Tenures, *Journal of the Royal Asiatic Society*, Vol. II., p. 205. Vol. III. p. 350.

from changes of ideas, of laws, of education, it has still held its own. Those of my countrymen who may be fond of grand things from Europe may laugh at the *patel* claiming the privilege for his own caparisoned bullocks heading the procession and taking the first jump, or at the head *Mahajan* claiming the right of first applying the ground sandal-wood to his forehead is his by descent; or at the *Matadar* panting to sign village papers, when his emoluments have been virtually abolished by the Bombay *Watandar's* Act of 1874. But underneath all these claims, lies the indigenous Municipal feeling which sustains the community. This is the material which, when fashioned by culture and improved by a proper political training, will be of the greatest value.

I appeal to our past history for confirmation of my remarks. Lord Ripon's resolutions are, it appears to me, *not* a leap in the dark. They are noble monuments, giving expression to the educational results of the last fifty years, and to the policy which has been slowly but consistently pursued by the Government of India. The history of our Municipal administration up to 1856, as far as Bombay is concerned, may be learnt from a Memorandum compiled by Mr. Edward Pratt, and published in 1856 by order of Government: (Selections from the Records of the Bombay Government, No. XXVII.—New Series.) The subject was first systematically discussed by Sir George Arther in 1844, and was again mooted by Lord Falkland in 1849. In 1850, the first comprehensive Act was passed—No. XXVI. of 1850, and this was our legal Municipal guide upto a recent date.

For the city of Bombay itself, a new Act was passed in 1865; after a trial of eight years, it was weighed and found wanting; and Bombay is now working under a new constitution framed under the guidance of Sir Seymour Fitzgerald and extended by the local Council in the time of Sir Philip Wodehouse. It is still obnoxious to the remark that was first made by the then Advocate-General of Bombay and lately a Puisne Judge at Calcutta—Mr. Justice White—that it gave us a homœpathic doze of popular representation, and an overwhelming doze of Government interference. If this is true of the city of Bombay, it must of course be worse in the Mofussil. With such exceptions, as Mr. Yajnik has very

justly mentioned,* we are now in danger of going backward in our Mofussil Municipal administration since the Act of 1873 and especially since the time of Sir R. Temple. I will give two notable examples: Poona had a body of Municipal Commissioners who were making considerable progress in self-Government. The tendency of late years has been to exclude the independent and competent, and invite a parcel of dummies. Take Mahabaleshwar, the summer residence of the Bombay Government. All the Bombay men on the committee, and all the independent men of the town, have been quietly knocked out. Government may send for the lists, and compare them. Who would like to go and serve without pay, and be sometimes bullied in the bargain? And this is generally the case where the officers are inexperienced or headstrong or both. To have one's own opinion in this country is often a sin, and to be able to express it, and to support it with facts and arguments, is a greater sin still. This kind of temper is a failing; but when it takes hold of Europeans, or Indians, the consequences are disastrous. I have gone over the Administration Reports that were accessible to me, and I see no complaint there that the people have failed in the discharge of their duties. It is a record of silent progress. In 1877, the people of Poona applied for the privilege of electing their own representatives. Their request has not been granted, to my knowledge, to this day.

The Government of India itself seems to have long been of opinion that an extension of self-Government in Municipal and local matters was desirable, and could be carried out with great benefit both to the State and its subjects. Thus, the Hon'ble Mr. Laing, the Financial Member of the Viceroy's Council in his statement for 1861-62, says:—

"As regards public works, it was intended that £500,000 should be transferred to Local Budgets, and provided for by local taxation. This intention has not been carried out for a very obvious reason, *viz.*, that new constitutions having been given to the three Presidencies, it would have been manifestly improper to anticipate the action of the Local Legislative Councils in a matter which is so peculiarly their province."

---

* See note on Local self-Government in the Bombay Presidency, by Mr. J. U. Yajnik.

Mr. Laing continues:—

"I am as strongly as ever in favour of the principle of local taxation for local objects. In fact, if this great Empire is ever to have the Roads, the Schools, the Local Police, and other instruments of civilization, which a flourishing country ought to possess, it is simply impossible that the Imperial Government can find either the money or the management. The mere repair of the roads where anything like a sufficiency of good roads has been made, is a matter altogether beyond the reach of any central *bureau*.

"It is of the first importance to break through the habit of keeping everything in dependence on Calcutta, and to teach people not to look to the Government for things which they can do far better themselves."

The above passage is quoted and affirmed in an important resolution of the Government of India, in 1864: [See the *Gazette of India* Extraordinary on Municipal Police, September 14th, 1864. Circular letter No. 2246, dated 31st August 1864.—From the Secretary to the Government of India, Financial Department—To all Local Governments and Administrations, forwarding a Resolution of the Government of India in the Financial Department, No. 2245 of the same date.]

This Resolution reviews the history of the *Mohtarfa* and other like taxes in India. See amongst others Mr. Pratt's compilation to which I have above alluded and the Resolution (see page 12 of the *Gazette of India* Extraordinary) which runs thus:—

"One of the advantages of this mode of providing for the Police of towns is, that it renders necessary the creation of a Municipality and a Municipal Fund; and that although the application of the Municipal Fund is obligatory to the extent of the cost of the Police, beyond that limit its appropriation to conservancy improvement, education, &c., is at the discretion of the Municipal authorities. Great public benefit is to be expected from the firm establishment of a system of Municipal administration in India. Neither the Central Government nor the Local Governments are capable of providing either the funds or the executive agency for making the improvements of various kinds, in all the cities and towns of India which are demanded by the rapidly developing wealth of the country. The imperial revenue barely suffices for the increasing demands upon it for objects of general interest; and the practical alternative is a large addition to imperial taxation, in order to meet the wants of the town populations under a centralized system, or a transfer both of the duty and the charge to those populations. Not only will the local requirements be more promptly and fully provided for under the Municipal system than they could

be by any Goverment agency, *but, when the people see that they have the management of their own affairs in their own hands, they will feel confidence to do things which they would not have accepted from the Government.** The appointment of Wardens by popular election in the south of India has already introduced a new feeling of liberality into the administration of the religious endowments. Where the field is open, the more advanced members of the community naturally take the lead.

"The people of this country are perfectly capable of administering their own local affairs. The municipal feeling is deeply rooted in them. The village communities, each of which is a little republic, are the most abiding of Indian institutions. They maintained the framework of society, while successive swarms of invaders swept over the country. In the cities also the people cluster in their wards, trade guilds, and panchayats, and show much capacity for corporate action. In making the more important improvements, they will have the aid of many intelligent Europeans who are settled at the principal places of trade in the interior.

"If an improved municipal administration were not requiredfor Police, it would soon be wanted as a basis for the more enlarged and effectual measures of conservancy called for by the present state of public opinion. The Government is totally incapable of furnishing either the funds or the executive agency necessary for such purposes in all the cities and towns throughout the wide realm of British India.

"Holding the position we do in India, *every view of duty and policy should induce us to leave as much as possible of the business of the country to be done by the people, by means of funds raised by themselves* †, and to confine ourselves to doing those things which must be done by the Government, and to influencing, and directing, in a general way, all the movements of the social machine.

"This policy has been shown to be in accordance with that of Lord W. Bentinck's and Lord Auckland's Governments. Lord Canning's Government attempted to give practical effect to it, by transferring the charge for roads and other local public works, to the extent of £ 500,000, per annum, from the Imperial Budget to Local Budgets. The reasons for this are given in detail in Mr. Laing's Financial Statemant for 1861-62; and in his Statement for 1862-63, he explained why the arrangement had not taken effect. ‡

No body, whether official or non-official, could have written more strongly than those who framed the above. And who were they?

---

* The italics are mine.

† The italics are mine.

‡ I have quoted this above.

The Viceroy, SIR JOHN (afterwards Lord) LAWRENCE.

MEMBERS of COUNCIL :

The Hon'ble Sir Robert (afterwards Lord) Napier of Magdala,

„ H. B. Harrington,

„ H. S. Maine,

„ Sir Charles Trevelyan,

„ W. Grey.

I think the above names are a sufficient guarantee that the whole scheme was thoroughly discussed, and well thought out. It was, one may say, the continuation of a policy of widening the foundations of British rule in India, by entrusting to the people, as far as possible, the management of their own internal municipal affairs. The above resolution, from which I have already quoted several paragraphs, concludes thus :—

"The policy of the measure now proposed is identical with that of of 1861-62; but the principle of local self-government is more easily applicable to populations collected in towns than to those which are scattered over the country; and, in fact, Municipal administration has already made considerable progress in India."

I shall now give a little of outside testimony on the same subject. An article on the District Municipal Act for Bengal (No. III. of 1864) in the *Calcutta Review* (No. 83, p. 26) begins as follows :—

"The extension of Municipal institutions throughout India, presents a most interesting phase in the administration of the country; and among the numerous beneficial reforms which have of late years been introduced into almost every department of the State, perhaps none will be attended with more important and permanent results. The Legislature has been working hand in hand with the Executive, and a great step in progress has been made towards local self-government and the encouragement of liberal principles ..... Everywhere on this side of India, at least, there has of late been manifested a general movement in favour of Municipal institutions, which cannot but have arrested the attention of all those who are inetrested in the social and material prosperity of the country."

Further on, the Reviewer says :—

"The causes which have led to such a movement are various, and in their nature more or less remote. The work of the present day in India is to

consolidate our rule, by distributing, and decentralizing as it were, the functions of Government—to perfect a mechanism of wheels within wheels, whereby the whole system shall move in harmony. The increased extent of our Empire, has called forth a host of Lieutenant-Governors and Pro-consuls. The same necessity has given rise to local Legislative Councils. The same principle is visible in the arrrangements regarding local funds. Without such division of labour, it would be impossible for the work of Government to go on. It would be impossible for the Viceroy to govern now on the regime that was in force in the time of Lord Cornwallis, when every petty detail of executive administration required the assent of the Governor-General in Council. And such division of labour proves not only the progress, but the increasing stability of our Empire. It shows that we are alive to the exigencies of our position, and that we are not only able, but not unwilling where necessary, to tread the thorny path of reform. Arising from the same tendency, another step in the right direction is being made in the establishment of self-governing corporations throughout the country."

Without fully subscribing to the words of the whole article (for it breathes here and there a party spirit which is often rampant in Bengal), I quote the above as useful to show our progress at a certain stage. For we are often in the position of the lion in the fable, our Anglo-Indian critics occupying the post of the human painter.

The *Calcutta Review* of April 1870, thus comments on the progress of local self-Government at that date :—

"Few matters of recent legislation have effected more towards the improvement of the public, health in the large towns of India than the institution of Municipal Comissions, including in the term Sanitary Boards. Without referring to the utility of these bodies in laying the foundation in this country of self-Government, they are immediately and especially beneficial in improving the sanitary condition of the localities in which they exist. Of course, such institutions do not progress without opposition, misrepresentation, cavil and internal quarrel either ; perhaps it is well they should do so. An "opposition" is the safeguard of all gubernatorial or public bodies, and the remarks, reflections and strictures one sees in the public prints on Municipal Commissions are, if not particularly, at least generally, the best signs of progress. During the ten years under review, commencing with the presidency cities, Municipalities have been instituted in most of the important towns of British India where a mixed population of Europeans and natives reside. Many of these Commissions commenced as Sanitary Boards, afterwards expanding into Municipalities. The latter, however, cannot yet be regarded as generally " free and enlightened,' although in time they will doubtless become so. Government still reserves the right

of appointing certain officers *ex-officio* as presidents or members. This, however, can only obtain for a time, and the more interest native gentlemen show in the matter, the sooner will local Government be altogether in their hands."

Following up in a chronological order, I now come to the period when Lord Mayo's decentralization policy was first introduced, and Mr. Laing's declarations in 1861-62 were again affirmed, that declaration being—"that by enacting Local Budgets, the scheme would greatly foster the growth of Municipal institutions, and what is still more important, of the spirit of local self-help and self-guidance, which is at the bottom of a nation's greatness:" (Supplement to the *Gazette of India*, 18th March 1871, p. 477)

At the next meeting of the same Council (see extra Supplement to the *Gazette of India*, 16th May 1871, p. 9), the Lieutenant-Governor, North-West-Provinces, in the course of a speech on local taxation, urged the necessity of a local Council to assist his deliberations. He then spoke of the necessity of a local Legislative Council, and of Municipal Committees and self-Government, not in such a halting manner as the present Lieutenant-Governor appears to me to do, but in the following cordial and cheerful tone:—

"And why, My Lord, should there not be a local Legislative Council also? We have all the elements for it here. Besides official members, there are many independent Native gentlemen well fitted to aid in such a Council. It is true that, compared with the presidency towns, the non-official European element is small; but even from these, worthy representatives might no doubt be found.

"Such a local Council would, I submit, be better fitted than the Imperial Legislature, for discussing and settling local measures like this Bill, Chowkeedary arrangements, Municipal measures, and such like matters.

"With a local Council, such measures would be discussed in committee; would be debated in open Council; the measures and the reasons for them would become locally known; would be taken up by the Native as well as the European Press, and would thus become familiar to the community. In short, they would acquire what, I submit, they have not now, a popular aspect.

"My Lord, it is my constant, my earnest endeavour and desire to lead the people to administer their own affairs. In all my circuits, it is one of the first things I seek to impress upon the Municipal Committees, that self-Government is one grand object of our municipal institutions, and they are beginning to respond. I am convinced that no measure

would tend more directly to foster this spirit of independent action than a well selected Legislative Council, with representative men, *seen* and *felt* to be debating on questions affecting their own people.

"And who, My Lord, would be better qualified for effective local legislation? Wants and wishes, and it may be prejudices, all bearing upon local legislation, are surely best known to the inhabitants of the province."

To the above observations of the Lieutenant-Governor, Lord Mayo replied in the following terms:—

"I will only add one word more; and that is to express my great satisfaction at the opinions enunciated by the Lieutenant-Governor in regard to Local Committees; that is to say with regard to the assistance they may receive from the natives of the country, as to the management of their affairs. I had the satisfaction of mentioning the other day how the Lieutenant-Governor of a neighbouring province had pushed on that good work.

"I believe the Lieutenant-Governor of the North-West has done no less than Sir Donald McLeod in this respect; and I believe that no man can devote his time or his labour to a work that will be so certain to effect a more immediate result, than the development of those institutions which have always, and in every country, formed the germ of good Government."

To the above I have but little to add. The records of the past twelve years—our Administration Reports, the statements of our moral and material progress annually submitted to the Imperial Parliament, the progress of Education as evidenced by the Reports on Public Instruction in the several presidencies and shown at the Convocations of our Universities, all alike point to the immense development, mental, moral and political that is going on in India under the ægis of British power, continuously and without interruption. This last was, I apprehend, the ground on which the Hon'ble Mr. Gibbs chiefly based his adhesion to the aforesaid local self-Government resolution, when the local self-Government Bill for the Central Provinces was before the Viceregal Legislative Council, on the 12th January last; and the whole of the above considerations ought to be a sufficient answer to those who question either the policy or the wisdom of the self-Government Resolutions of Lord Ripon, which I take leave to say, so far from being a leap in the dark, are only the addition of a corner stone to that great edifice upon which rests the dominion of British India.

V. N. MANDLIK.

GOVERNMENT INTERFERENCE IN MATTERS

OF

SOCIAL REFORM AMONGST THE HINDUS.

THE HERMITAGE,
Bombay, 3rd April 1885.

FROM

THE HON'BLE V. N. MANDLIK, C.S.I.

To

J. MONTEATH, ESQ.,
Under-Secretary to Government,
General Department,
BOMBAY.

SIR,

I HAVE the honour to acknowledge the receipt of the letters noted on the margin,* and beg to submit a few remarks on the subjects referred to in the accompaniments to the first letter, on which I have been requested to report by His Excellency in Council.

*No. 4164 of 1884, General Department, dated 13th November 1884, forwarding for my opinion, two papers by Mr. B. M. Malabari of Bombay.
No. 296 of 1885, General Department, Dated 28th January 1885.

2. At the out-set, I beg leave to observe that there is no enforced widowhood in India at present, nor is there any such a general early marriage system prevalent amongst the Hindus as can be remedied by Government action, either executive or legislative; and that Government would do well to refrain from interfering in matters which, even when viewed from the most advanced point of European thought, are quite outside the pale of Government interference, and which the Hindu community consider as peculiarly the

province of their own religious constitution, the violation of which in the teeth of solemn state-guarantees would be regarded as an evil of vast magnitude.

3. The writer of the above notes, Mr. Malbari, is not a Hindu. And although the Hindu system is so catholic that some of the oldest works thereon receive the wildest tribes like the Shabaras within its folds, and although it is so tolerant that it leaves people of all races and creeds free to worship God according to their own beliefs, yet no one but a Hindu can possess that intimate knowledge of the Hindu Shastras, and the daily observances enjoined therein, which is essential in any writer who attempts to prepare papers on the questions now placed before Government. And I must distinctly say that the writer in the present case (so far as his papers show) appears to have no qualification whatsoever to sit in judgment upon the entire Hindu community of India of whose customs and practices he seems to know nothing, and could but know very little. He gives no authority for any of his statements, and beyond a cloud of words and the free use of imputations of all manner of crimes and follies to the Hindus, there is little in the papers that renders them attractive, and there is still less which entitles them to be regarded as state-documents. They are besides full of contradictions and sophisms.

4. I shall take up the second note first, *viz.*, that on "enforced widowhood." To become a widow is a misfortune. There is no balm to a soul so wounded except the one obtained by entering into a higher kind of life, abnegating one-self on the altar of duty and sacrificing *self* to a higher *self* in a manner recognised by the highest religious sanctions as well as by the sanction of society, and by training the mind and body so to live in this world as to qualify one's self for a higher. This is the accepted doctrine and practice of the Hindu Shastras which the highest minds have adopted and still pursue more or less successfully. What does the actual condition of the people disclose! The simple but effective *Sávitri Upákhyána* which is religiously observed throughout Hindustan, shows that the second marriage of a woman is opposed to Hindu religious convictions. The *Sávitri* day or days are the holiest festival for female India. Government may refer to authorities from the Mahà bhàràta down to the *Vratarâja.*

5. Taking another view of the subject, the Government of British India has long since done all it could do (if not more, as the majority of the people think) in this matter. By Act XV. of 1856 any Hindu widow is free to marry if she likes, and her progeny is looked upon by the law as entitled to succeed as other Hindu children. The restriction on individual freedom of action being thus removed, to speak of "enforced widowhood" is merely to employ the term in a literary sense; for I beg leave to state that the words are out of place altogether when advanced in what is intended to be a state-document.

6. Several years ago, a Hindu gentleman invited by circular one hundred persons of his own caste, and of proper social standing and strong courage, and with a number of similar attributes (I forget his exact words) to give him an assurance in writing that they would dine with him if he married a widow of his own caste. The proposal was no doubt looked upon by the people addressed in the light it deserved; for no body was known to have joined this Luther of rose and lavender: the movement must have died a natural death, for nothing more was heard about it. The present scheme for cajoling or worrying India against its own convictions into compliance with the notions of misinformed visionaries is more audacious and mischievous, for we are to have Members of Government on the roll of patrons. One can scarcely disguise a feeling of contempt at such an exhibition of moral helplessness and feebleness as running up to Government for the amelioration of every social evil, real or imaginary. I cannot, I regret, accept with complaisance the compliment which the present writer impliedly gives to the Hindus as being so utterly incapable of self-action. Such a supposition argues ignorance of history, past and present. The Hindus have never lost their originality through countless revolutions and varying cycles of time. Has the effect of English education which has brought them into contact with Milton and Shakespeare, Wordsworth and Tennyson, Goldstucker and Muller, and their worthy compeers in the republic of letters so enfeebled their intellect as to make them forget their own Bhishma and Bali, Vasishtha and Janaka, and other illustrious ancestors and lose their own self-respect?

7. It is now thirty years since the Act (XV. of 1856) was passed, and if the results which the friends of that Act calculated

upon, have admittedly not been realized, it only proves that the legislature has been in advance of the remarriage-seeking community in whose temporal interests they were asked to interfere against the protest of the majority of Hindu India, and the unanimous opinion of all the Sadar Diwani Adawlats in the four Presidencies; and that the Act itself is opposed to the general sentiments of the Hindu community. It may be generally said that in classes to whom custom has opened the way, remarriages do not, as a rule, take place. It is admitted by the leader of the progressive Brahmos of Calcutta that such marriages are opposed to Hindu sentiment, even in the case of persons divorced from caste. The whole Hindu Bengal has pronounced a similar verdict.

8. It is hinted that the disposition to perform remarriages is general amongst the people, but that it is stifled by the influence of caste and the horrors of excommunication, to which allegation I reply that it may not be inaptly said that the present is an attempt to set up, under the auspices of Government, a certain class of people as social martyrs, a position degrading to all who seek it and subversive of the highest interests of the community. I would here request the attention of Government to the just observations of the British Indian Association of Bengal who have lately addressed the Bengal Government on the subject:

"The Government is pledged to neutrality in religious and social matters; it is to continue to profess to abide by that pledge but at the same time it is to aim, in the words of Mr. Malabari, 'a deadly blow' at what the pledge requires it to let alone. The attempt made to draw a line of distinction between legislation and executive action is futile. It is quite impracticable in the case of this country. As a subject race, living under a foreign Government, alien in race, religion, language, habits, manners and customs, the people of India cannot recognise any such distinction."

I submit, no individual has a right to complain that his fellow caste-men will not socially mix with him, if he himself voluntarily breaks their rules. All that the Hindus plead for is to be left to their own social rules and obligations. Their opponents would rather use two yards or measures, one for buying and another for selling. I would also observe, that Mr. Malabari is wrong in his facts as to ex-communication. It is not what it was once said to be and i

it were even a hundred times more powerful, those who deal in the way some "reformers" try to do, have no right to complain, if they are done by as they wish to do, and that by a simple moral agency which only wishes to be left as free as themselves, and as such claims to be beyond the pale of Government interference, either executive or legislative.

9. Coming to the last part of this paper, I observe that there are four proposals which are submitted to Government :—

(I.) In regard to the first, my answer is partly anticipated by the fore-going remarks. The Government can and will, I submit, do nothing, in their, as it seems to me, peculiar position, and ought carefully to abstain from giving any encouragement whatsoever to people who come up to them on such errands, as Mr. Malabari does, which is a cheap way of gaining popularity, but has, I am sorry to say, already done more harm than good. The scarcely concealed parade by Mr. Malabari of his own doings in this connection is not calculated to increase the people's confidence in the application of state agency. For obvious reasons I say no more.

(II.) As regards the second proposal a mere statement of it is enough to show its wild and chimerical character. How is Government to ascertain whether a widow has adopted perpetual seclusion or whether it has been forced upon her ? Are the Magistrates to be empowered by law to pay domiciliary visits and set up a social inquisition into sacred hearths of Hindu families throughout India ? I would most seriously request Government to consider the position. Are the Hindus to advertise their family affairs ? They (male and female) are constitutionally averse to discuss them except in their own ways, and in their own families. They are quite prepared to do as they would be done by and I beg most respectfully and yet emphatically, that they should be left alone in the free exercise of their own rights. In one part of the paper it is said that the widows are so far advanced that they set forth their

grievances "in prose and verse, in odes and elegies in piteous appeals and memorials to the Collectors of the districts, and the mother-Queen." If so, this second proposition is a contradiction in terms. A woman who has advanced so far, is surely free to dispose of her own person as she pleases. There is no law that I know of standing in her way, nor is there any unlawful social combination throughout the country, which she could not legally put down by an appeal to the nearest Magistrate or Subordinate Judge. The fact of the matter, if I may so say, is that this overdrawn picture has its counterpart only in the imagination of the writer. There is a general belief amongst Hindu women that a second marriage by a widow imperils the future happiness of both her own and her deceased husband in heaven. To secure this happiness is the object of the *Sâvitri* observances all over India, to which I have already referred; and I know of no state machinery which can be effectually employed to counteract this universal prevailing sentiment.

(III.) The third proposal is, if possible, still more objectionabl. Every subject of the empire has a right to complain of those wrongs which by law can be redressed; but that the general revenues of the empire are to be wasted upon domestic squabbles is a proceeding only on a par with the above proposals.

(IV.) The fourth proposition is one the answer to which has been almost anticipated in the course of the above observations. I beg to add that the principle underlying this is open to serious objections founded on the highest considerations. Excommunication generally follows a caste-meeting and the common deliberations of its members and whether it is the *Chaudhri* or the *thânai* who gives effect to the fiat of the community, (for no learned priest *ever* goes about to my knowledge), he is no more guilty than any other member of the body to which he belongs. If the excommunication is wrong and actionable, no doubt those who proclaim it will deserve punishment; but the

bona fide assertion by a caste of their own rights for their own protection is not only allowable and allowed in practice, but the assertion of the opposite doctrine denying to the members of a caste the power which they undoubtedly possess, of expelling from their society those who offend against their rules, would be tantamount to depriving such bodies of the right of determining what people they will associate with themselves in their social circle. Freedom of action has been secured to the Hindu widow by law. She is now free to do as she pleases. No one can touch her *statutory* rights. But the Hindu castes only seek to exercise their own freedom in matters which they consider as pertaining to their own religion and society, and they have a right to insist that the uniform, and in this respect, fundamental policy of the state should never be departed from.

The Hindu community may have its short-comings; but, with submission, it need not fear its detractors whoever they may be. Leaving the past (the memory of which is scrupulously preserved by the daily practices of the people,) if a modern Ahalyabai at Indore could dispense justice like Dharmaraja from behind the *pardá*, could strike terror into the hearts of neighbouring princes by plain letters, and yet could so sanctify her life as to make her shrine an object of devotion to her votaries at the present day, the widows of India are in excellent company and need no lecture from the present writer.

10. The discomforts of unwedded life and evils of illicit child-bearing cannot be rooted out by any action of Government. The history of the world furnishes ample evidence in support of this position; and I will not make remarks offensive to any particular nation or community. To talk of the responsibility devolving on Government by the prohibition of *Sati* simply betrays want of knowledge of the state of Hindu society. Even when *Sati* was not prohibited by statute, the number of women who sacrificed themselves on the funeral pyre was very small, and the prohibition of that custom cannot be said on that ground to have influenced to any appreciable extent the condition of the widows of India. If the

writer thinks that he is surrounded in Bombay by five lacs of the followers of what he is pleased to call "a foul superstition," he must know his own remedy for securing his own welfare. His mode of warfare is singular. On the one hand, he wishes to persecute priests, for doing what they believe to be a religious duty and a social right; and on the other, he would applaud them as not altogether "devoid of sympathy," nor "so bigotted as to deprecate social progress." The truth is, I am sorry to say, the writer is carried away by his own verbosity. I will not, therefore, trouble Government with further criticism on this portion of the paper. I do not know whom the writer proposes to engage in doing the work here indicated; but in speaking of the "average educated man" he forthwith styles him the "young reformer" and yet he is subsequently thus portrayed:—

"Modern education has made him impatient and offensive. He has no hold on the popular mind." I trust if this is a correct portrait of Mr. Malabari's friends and patrons, those whom the cap fits will know how to deal with this matter, and settle their own accounts. Meantime I only beg permission to add that whether it be reformers or other men, if they do not properly understand or feel sympathy with Hindus, they can do the Hindus little good; and, therefore, it is useless for such persons to go up into the pulpit.

11. In reference to the paper on early marriage, the ground one has to traverse is equally delicate. I am sorry to find here again Mr. Malabari has resigned himself too much to the guidance of an ungoverned imagination, and this as well as his own position as a non-Hindu, has evidently betrayed him into mazes from which extrication would seem to be difficult. This may be seen from statements quoted below. The first is that the area of selection is, in his view, so narrow that "practically Hindu parents have to make Hobson's choice," "accept the first boy or girl available or to buy one who comes the cheapest." This is not true of Hindu society. Receipt of money from the bride-grooms or their parents is considered the mark of an *Asura* marriage. And it is looked upon as sinful. The whole picture in the first paragraph is miscolored. I dissent entirely from the statement about "married martyrs." As a rule, the communities represented are sufficiently large. But supposing they

were small, fail to see the bearing of that circumstance on the question of early marriage. If caste narrows the area of selection, late marriages cannot cure the evil. Mr. Malabari's sneers against caste may be offensive, but are not likely to do much harm. Those who wish to renounce their caste, are quite free to do so; but it is quite clear that one cannot be both in a caste and out of that caste, at one and the same time.

12. In the next paragraph, again, the picture is equally faulty in outline, and lamentably miscolored. If evidence is of any value, I could cite at least ten times more cases of happy unions in early life, some even beyond the dreams of such writers. But I refrain. If a healthy mind in a healthy body may be accepted as good evidence, in order to judge of the results of such married life, I could produce the evidence of scores of families over at least three generations, producing men able and willing to work at fifty, sixty, and at ages yet higher. Those who mourn in these days of diseased constitutions, of weakened intellects and perhaps of perverted morals of those whom they cite in support of their contentions must seek the causes of such unhappy results in quarters other than those of those early married Hindus who have been trained under proper family influences.

13. At the risk of a short digression, I may observe that the "age of consent" which is all that is required for marriages (where consent is necessary) is twelve for females and fourteen for males even in such advanced countries as the United States of America. In New York, an attempt was made to raise these periods to fourteen and seventeen respectively, but they were so disrelished by the people that a law was passed in 1830 restoring the old periods of twelve and fourteen as before. In the old Hindu institutes the marriageable age for female is twelve; but that for males has been contracted by the gradual curtailment of student life, and a change in the social usages of the people. As I have said before, the system has not apparently injured those who have lived properly under it. I am not sure that (as far as my studies go) the same is not in force in many other countries. But were the case different this is not a matter for Government to interfere with in the case of Hindus, for with them marriage is not a contract but is a re-

ligious sacrament, and as such it is one of the most valued corner stones of the foundations of Hindu society. If in human hands a few failures appear to have occurred, the system cannot, on the whole, be said to have been without any beneficial results in actual practice. If it is complained (as it seems to be) that over-population results from early marriage, it occurs to me that this is not only not borne out by facts but that the reasoning is inconsistent with that alleged wretched physical deterioration of which it is supposed to be the motive cause. Is physical deterioration the cause of over-population? Again in the next paragraph, where Mr. Malabari cries down the "Let-aloneist," he is again lost in a jungle of words. If the people feel the necessity of avoiding such evils as are here depicted, I have no doubt they will act under it. But I do not exactly see how a class can be puffed up and cried down in the same breath as seems to be done here. If Mr. Malabari will not trust to education I regret I cannot agree with him. I decline to believe in educational talismans which will work like the magician's wand. Institutions must grow, and so must habits; they cannot be imported at the bidding of any body and it would not speak much either for our advancing education or for our moral courage if the Hindus did not know how to regulate their own domestic economy. This is with reference to the higher classes. With regard to the lower ones, to say that early marriage obtains most widely amongst the most illiterate mass is to betray the writer's own want of knowledge of the bare facts of the case.

14. Before going to the remedies proposed by Mr. Malabari I must emphatically enter my protest against the statements in the last paragraph of this paper. With an experience extending over nearly all the presidencies of India, and covering a period of more than thirty years of public life, I have not heard of such practices being sanctioned by the Hindu community in Western India or elsewhere. I can give instances amongst other advanced nations where young men have married and do marry women old enough to be their mothers (if not their grand-mothers), but that I am not called upon to do. This however I must say that it is the Hindu rule both of law and practice that the wife *must* be the husband's junior in age. Any transgression of this rule (which is no doubt commendatory and not mandatory,) would

be looked upon as a great irregularity ; and I have not the slightest doubt it would be duly punished by the community which had been thus offended if properly appealed to. And further a fictitious marriage like the one here talked of would be abhorred like any other crime. I am sorry to say I do not exactly see the value of sensational writing on the present question. If it is sought to terrorize the simple religiously-inclined Hindus, that time has passed away. Magisterial prosecutions will promote neither early marriage nor second marriage.

15. I shall now briefly consider Mr. Malabari's proposals under this head.

(I.) The married students are to be denied access to the University examinations.

The writer does not say how he is going to dispose of Mahomedans, Jains, Buddhists and other persons who do not profess Hinduism. What are to be the new formularies and articles of admission to degrees, and how is the diversion of state funds for social proselytism and indirect religious persecution to be defended by a state whose foundation is based on the grand principles of social and religious neutrality and complete toleration ? I think such a proposal would be foreign to the laws which guide our Universities, and must be rejected. All aspirants to University honors will be admitted, if they are young men of good character. I am unable to encourage Mr. Malabari in the hope that the adoption of his suggestions would be welcomed by leaders of native society in India.

(II.) This a suggestion for an Association. So far as this may be an appeal to the good sense of the community, it might do no harm, but it is for independent and experienced men to take the initiative, if desirable, and not for young men who are still in a state of pupilage. I would never encourage sons setting themselves up in opposition to their parents, as I have sometimes seen done. In my own opinion the drawback to these associations is, that temptations to secede are often very strong, so that mental reservation and family necessities are sure to be pleaded, often with great force and it will only encourage hypocrisy and a departure from truth if such associations are formed.

(III.) This is a suggestion which is opposed no less to the dictates of common sense than to the highest principles of state policy solemnly enunciated in our charters. I deny that early marriage is the sole or the most important cause of native decline, and I am prepared to point out instances of men properly trained who have done as hard work as any other class of state-servants although they had married early. Is a married man necessarily inferior to the unmarried as a Government servant? I refrain for obvious reasons from running this comparison any further. Disparity of age is not unknown in England itself. I refer His Excellency in Council to the very wise observations of the British Indian Association in paragraph eleven of their valuable communication which I append hereto.

(IV.) Mr. Malabari asks the Educational Department to prepare and disseminate tracts in the shape of a few chapters in their text-books on the subject—a demand which need not be commented on, for it simply means diversion of a state department entrusted with high functions intended for the benefit of all, to the dissemination of the views of a narrow minority, views utterly opposed to the most cherished religious practices of the vast majority. Were the department so to descend from its present height, such action would, in my humble opinion, tend to create most undesirable feelings of discontent on the ground of improper state interference, whilst the alleged evils could, in no way, be diminished.

(V.) This suggestion is that any money paid by the bridegroom be deposited in the name of the bride and that a law should be passed to that effect. Apart from other objections and very serious ones, the proposal, would, in effect, ask Government to declare that a girl may be bartered away, provided the money realised by such sale is placed to her credit. In my humble opinion, moreover, such a demand could not be entertained under the law as it stands at present. Where custom sanctions the receipt of a present like *pallâ*, it is deposited at interest and paid to the bride after the consummation of the marriage, or rather after the

performance of a *garbhâdhâna* ceremony, or some other ceremony, equivalent to it. The Hindu law condemns such presents, and it is an exaggeration to say that in all cases of marriages between parties of unequal age, money alone is the motive for giving away the bridge in marriage to an elderly person: and further it should be understood that any objections which exist against the giving away of brides for a pecuniary consideration, apply with equal force to all marriages, whether the parties are of equal age or of unequal age.

16. In his revised note dated the 23rd October 1884, Mr. Malabari gives it as his conclusion that the educated classes and all sensible Hindus are quite unable to help themselves without the aid of some authoritative regulation. This is a cheap form of casting the slur on my fellow Hindus of being too imbecile to regulate their own concerns. Himself not being a Hindu he may be quite safe in regard to his own position, but so far as Hindus are concerned I beg to decline his patronage with my best thanks.

17. It is hinted that official pressure was required to induce the establishment of girls schools in the Mofussil: similary it may be used now is probably the conclusion suggested. If there was improper pressure used, as is here alleged, I regret the occurrence; because I feel sure it must have been injurious to all—to those who used it and to those on whom it was inflicted. There can be no waste of force in nature: it must produce good or evil.

18. I beg to apologise to His Excellency in Council for the length to which this communication has extended. If I could have curtailed it, it would have been a pleasure to me. I have abstained since July last from saying a word although privately appealed to do so. For I saw it was of no use. I was and am convinced that the matters which Mr. Malabari brings before Government pertain to the social and religious life of the Hindus, any outside interference with which will be highly demoralizing and productive of most serious discontent, and yet I came to the conclusion that I could do no good by writing to Mr. Malabari. Hindu society is not what Mr. Malabari paints it, and as some might perhaps think it to be. If there are things amiss within its own sphere, there is life enough therein to correct them.

It is not at all stationary as some would make us believe. If people will not see, it cannot be helped. I see from a pamphlet just received that a minority of Hindu gentlemen are coming forward to beseech state interference in matters which, as I submit, are not objects of Government interference. For the sake of argument, even admitting the evil example cited, I ask why do not the writer and his educated compeers punish the monsters who are guilty of the practices complained of? Our greatest social and moral benefactors in Western India—Dnyânadeva, Tukârâma, Muktábai, Ekanátha, Râmdàsa and others were not helped by the human agency of armies, councils, and governments. They depended on higher power; their noble lives tell their own tale. We in Western India worship them; their temples, their memory, their writings are now living powers. I say it with all submission that there is no royal road to these things, any more than to others. People must try to *be*, to *live* what they preach. It is a slow, painful process, but what is higher education I should like to know if it will not prepare men for such lives of self-sacrifice and noble self-abnegation? All these saints—male and female—lived between the 14th and 17th centuries of the Christian era.

19. Even on the most utilitarian view these are matters which fall neither within the necessary nor the optional functions of Government. They are rather the out-come of an attempt which if it could succeed, would create a sort of artificial moral police, whose action would check and dwarf the national intellect, and under pretence of doing some real or imaginary good, would introduce a system of state interference with the most cherished objects of Hindu domestic life, which, so far from befriending the people, would tend to their servility, stamping out all moral energy, and, in the long run, unfitting them for any of the higher purposes of life. I am sure this is a consummation which the Government of British India will indignantly repudiate, and in that hope rest not only the contentment of the community but the safety of the empire.

I have the honor to be,

SIR,

Your most obedient servant,

V. N. MANDLIK.

MEMORANDUM

ON THE

EMPLOYMENT OF NATIVES

IN THE

HIGHER RANKS

OF THE

PUBLIC SERVICE,

(Being a reply to questions by the Public Service Commission of 1886.*)*

STATUTARY SERVICE.

The first point of equiry before the Commission is in regard to the existing *Statutary Civil Service.* About this institution, my view is this :—If the Act be properly worked out, and the employment of natives of India " of proved merit and ability" be made in the Civil Service of Her Majesty in India, I think the object of the law will be fulfilled, and the country will be benefited. The complaint now made is, as I understand it, not against the Act itself, but against the administration of the Act, because if men " of proved merit and ability" are appointed nobody ought to complain, and if some grumblers do cry out, they can have no merits on their side and need not be listened to by the Government of India. As the law is now administered it gives rise to cringing and lays a premium more on favoritism than on the sterling qualities of the appointees. Sometimes the state is more fortunate, and a candidate with fair qualications comes in.

Notwithstanding all that has been said against it, this branch of the Civil Service should, I think, be retained; but in order to get over the faults incident thereto, and thus to improve it in some measure, I would propose that this system be worked partly by

nomination and partly by competition—that is, the Government of India should first nominate (chiefly through the agency of Local Governments) a certain number of candidates each year, the number to be at least twice as large as is likely to be required in any given year. A period and standard of examination being prescribed, the nominated candidates should be required to pass an examination and on the results of that examination, the final appointments should be made to depend. A great deal is being said that the appointments to the Statutary Service should be made from the ranks of the uncovenanted service. I do not think this advisable. For, as it is, the superior appointments in this service are valuable and are most of them held by Europeans. That such is the case in the Forest, Registration, Jail, Revenue Survey, and other Departments, the Commission may see by referring to the Civil Service list for the last quarter.

COVENANTED SERVICE.

As regards the *Covenanted Civil Service,* I must say that competition in England is not looked upon favourably by the people of India, and for my own part, I consider it detrimental to the people in every way. Competition need not be called English competition, any more than it need be called Indian competition. A competitive examination should, I think, be held at some one centre in India and one in England. Allahabad, Nagpore, or Poona, might be fixed upon in India. This would be an act of bare justice and no philosophical argument is required to support it. There ought to be no difference in the character of the examination—the same papers, the same standards. Natives of India have been eligible to Her Majesty's Covenanted Service since 1833 ; whereas the competitive examination dates much later. It cannot be said, therefore, that the conditions now imposed were held to be necessary when the privilege was first granted. I am opposed to sending young men from India, after they have passed their examination, to England for further training ; because the required training can be given on the spot and ought to be so given. There is enough of raw material in the country. It only requires education and guidance, and after an experience of more than 35 years of public life, consisting of 11 years' Government service in nearly all Departments in the Bombay Presidency, and about 24 years' practice at the High Court Bar, I am quite satisfied on this point. Besides after a

two years' residence in England at this period of a man's life, in a strange land, placed amidst temptations of all kinds, and away from his own community, kindred, and friends, the young man is not likely to bring in a large stock of substantial good, but is more likely to return more or less denationalized, with superficial foreign habits, and out of sympathy with his own people and with high notions based on his visit to the great centres of European civilization. There is besides great danger to health from sudden transfer to a totally different atmosphere. No wise parent ought to send his children to England under such circumstances. I have been in direct contact with some of the best European gentlemen in the service, and from them I have derived great help and valuable instruction and training; and I am quite satisfied that a journey to England at this period is unnecessary and would be quite detrimental to our best interests.

Some witnesses have told the Commission that in a few years more Hindu habits and ideas in this respect will change and that people will readily do that ten years hence which they decline to do now. I regret I cannot subscribe to the views assumed in those social prophecies. Hindus have remained Hindus under various denominations for thousands of years from times before the beginning of European history, and I trust they will preserve their nationality and customs. If a grown up man wishes to go to England in order to qualify himself for some particular profession or industrial pursuit, he may go if he has the means. With some, it is the fashion to cry down the natives. Thus one witness runs all superior class Indians down as physically incapable of working in the sun. Has he ever seen the scores of active and capable high caste Mamlatdars (Tahsildars), Mahalkaries (sub-Tahsildars), and Police officers working in the sun? The whole subordinate staff of the Revenue Survey are always doing their field work in the sun throughout the fair season. Most of them belong to the higher classes of Hindus. I believe there have been and there still are hundreds of them so employed as the Commission may see from returns which may be called for. Again, their honesty is attacked by some witnesses. I ask for facts. I don't say that they are all images of truth; but black sheep will be found everywhere in all countries, and in all communities. One

witness is reported to have said that "though for a generation they have had the highest available training no Indian has originated any important practical improvement," and further that all measures of practical improvement in administration within the last 20 years have been the fruit of European talent and skill in the Covenanted Civil Service. As to these remarks, I would first ask whether the natives have had any fair field for showing their ability and originality; secondly whether in such limited spheres in which they have been allowed to act, they have not discharged their own duties to their own credit, and to the satisfaction of their superiors? The line of reasoning followed by these witnesses reminds me of Æsop's story of the Man and the Lion. Again, the example of the Lingayats of the Southern Mahratta Country is brought forward by one to show that there are religious divisions amongst the people of India. This witness ought to make a journey to Pandharpur to see for himself, that *there* at all events the Lingayats, the non-Lingayats, and all other Hindus worship a common god, and history shows that in the most prosperous times, and under the best monarchs, religion whether in the East or in the West, has made no difference in political employment. Even in England religious differences are violent, as a casual student of history might have seen from the outcries raised on the appointment of Lord Ripon to the Viceroyalty of India in 1880; and I hope that when this witness spoke, the history of Europe was not present to his mind.

The question of salaries in this service is before the Commission. On this, various opinions have prevailed, and the European authorities have mostly stated to the Commission that their large salaries are necessary to attract good men into the covenanted service. I admit that Government has a very delicate and responsible task in this matter; but I would ask them to take some facts into consideration. What are the salaries of British Officers in Ceylon and similar other settlements? If their comparative responsibility is small, but the men are otherwise unexceptionable, then it is clear that the salaries have been regulated by the nature of the posts and their responsibilites, and not by the distance of the appointees from their country. Besides, the European officials in India enjoy advantages here which they cannot command in their own

country. In regard to bare living, I would observe that if a Hindu *can* live on six pence (or four annas) a day, so *can* an Englishman or an Irishman or a Scotchman. I here appeal again to statistics. If Professor Newman and thousands of his followers can live comfortably on a dinner the cost of which does not exceed six pence, the highest placed European officer in India can, strictly speaking, live on less, because a smaller quantity suffices in this climate. To those who can command a liberal fare, the expense of living is doubtless much greater, but so it is to a Hindu who can live as richly as a European, and without using flesh, fish, or liquor. I do not understand what articles cost the Hindus less. We have to pay the same for renting or living in good houses. Our Reviews and other periodicals, our news-papers, English as well as Indian, our subscriptions to societies, our other subscriptions and entertainments, our horses and carriages, our railway fares and steamer fares, are precisely the same as those paid by our European fellow subjects. Europeans pay for exchange and for the support of their families in England out of their handsome salaries, but we have some of these charges to pay and they are increasing year by year, and besides we have to support our own poor without costing a pie to the state and without the costly, inefficient, and irritating machinery of the Poor Laws. It may he said that all Hindus do not live so handsomely as the above sketch implies; but my reply is that in most cases it is impossible for them to do so on their present scale of salaries. The attempt, therefore, ought to be to raise the scale of living amongst the Hindus rather than to depress them by a parsimonious economy, and I would, therefore, fix the salaries and pensions with reference to the places and not to the colour of the men filling those places.

I shall now submit a few remarks applicable to the whole subject. Some of the papers presented to the Commission would make the working of the present Commission wholly useless, because they say that the machinery of Government is too complicated, the work too grand and serious, and, therefore, there ought to be no sudden change or as little change as possible. For myself I say at starting that I am not a friend of violent change of any kind whatever. Let us follow nature. But that is not a reason for standing still. There is a grievance, and a remedy must be found. It is said that the

Collectors of Districts must be Europeans, and that unless the District Judges are also Europeans, they will not command respect and the administration of justice will suffer. With both these propositions I do not agree. Again, it is said that if natives were appointed Civil Judges, the judicial service will suffer; for in that case, proper persons cannot be selected for the High Court bench; so that even this moderate measure in favour of which some witnesses have spoken, cannot be carried out. I am sorry to hear from the opinions placed before the Commission that secondary education in India is deplorably backward. The statement is vague, and I cannot, therefore, subscribe to it. I cannot accept the authority of the European Professor of the Elphinstone College spoken of by a high authority, who complains that Latin is too hard a subject for native students. It is well known that Sanskrit is much more difficult than Latin; and yet Hindu students in Bombay are learning it well and some are, I believe, able enough to compete with any scholars trained at other Universities in any part of the world. With due deference, therefore, there is no "intellectual feebleness" here. There is no doubt that generations of thought and suffering do form the man. But it is on that very ground that I base my remarks in the present paper. My observations in the first instance apply to Western India; but they may *mutatis mutandis* be applied to the other presidencies and provinces. I trust it will be borne in mind that we have had a past—a long continuous past with interruptions now and again and with some superficial changes wrought by varying circumstances and accidents. But I claim that the ground-work is there, and without going to antiquity, I shall simply appeal to current history and statistics. To show this past, I shall give only three examples.

Ahalyàbai ruled over Malwa from 1765 to 1795 and died in 1795 at the age of sixty. Her spotless life and able administration have excited universal admiration. "She used to say that she deemed herself answerable to God for every exercise of power." (See Malcom's Central India vol. I. p. 177). "Few will dispute the principle, but very few even among Christians act like Ahiliya Bai, as if they so believed." (Calcutta Review, 1869, No. 96 p. 24.)

The next character which I shall note is that of Rama Shastri Prabhune (of Mahuli, near Satara) who was appointed Chief Judge of

the Mahratta territories at Poona about 1759, and worked at Poona, I believe, till before the accession of the last Peshwa in 1795. Of this learned and incorruptible Judge, even such a severe critic as the historian of the Mahratta empire speaks in the most glowing colours, (see Grant Duff's History of ths Mahrattas, chap. 23, pages 344,345 of the 3rd Ed.).

The third personage is Appa Saheb Maharaj of Satara, who died in 1848 and whose administration of Justice, civil and criminal, but especially the latter, both in the time of his brother and after he became the sovereign, has always been highly spoken of.

All the characters mentioned above are Hindu. The individuals belonged to three different classes of the Mahratta community. The two first had no English instruction whatever; they were purely Hindu, and their educa tion was national. Still they did their parts well; they have had no equals in recent history; and I have not seen them surpassed anywhere else. Appa Saheb probably shared the advantage with his brother of the assistance of Captain Grant Duff; but at the period of which I write, he was acting by himself; and if he received training at first, his capacity and talents stand out conspicuously. Other examples I will not give. The above covers a period of nearly a century and upwards. And I could point to men in humbler spheres even under our present administration doing their work creditably.

I maintain, therefore, that a community of which the above are such noble representatives requires only to be properly guided and helped and further strengthened by all available means. It is not to be sat upon and bodily translated to Great Britain in order to qualify some of its members for service in India. It was not so considered in 1833, nor was that the view of Sir C. Metcalfe, Mountstuart Elphinstone, and other like authorities. I have above objected to the passed candidates going to England on these and other grounds.

If you cannot employ a Bombay man in Bombay for fear of his connections and surroundings, he may be sent to the North-West Provinces or to Madras, and similarly with other cases. Mr. Tagore was

apparently thus sent to Bombay and one Bombay Civilian, to Calcutta; and the experiment seems to be a success so far. I see, however, bitter provincial feelings strictly guarding the doors in the opposite direction. If India is a continent, it should be utilized to the full. There should be no interprovincial jealousy, as is now the case in several provinces.

V. N. MANDLIK.

22*nd February* 1887.

MEMORANDUM

ON THE PROPOSAL FOR THE

ABOLITION OF IMPRISONMENT

IN

EXECUTION OF THE DECREES FOR RESTITUTION

OF

CONJUGAL RIGHTS.

I am opposed to the proposed change in the existing provisions in regard to the execution of decrees for the restitution of conjugal rights, on the following, among other grounds:—

(1) That no case is made out showing the necessity of a change.

(2) That the proposed change is fraught with mischief, in so far as it will revolutionize the marital law of the land.

(3) That the proposed change will injuriously affect the position of the Hindu woman in a material degree.

(4) That the proposed legislation is altogether impolitic, and ought not to be forced upon the people.

2. In reference to the first ground, I cannot help observing that I have not yet seen legislation proposed on such fanciful and speculative grounds as in the present case. The alleged necessity of an alteration of the existing law rests on the solitary case of *Dadaji* vs. *Rakhmabai*, without any evidence before Government that the law has been abused as a matter of fact, or that a real hardship has followed from the ordinary observance of its provisions. A study of that case as reported in I. L. R. IX. Bom. 529 will show that it is at the best a very slender, if any, basis for fresh legislation. In the above case the plaintiff, Dadaji, instituted a suit on the Original Side

of the High Court, in which he prayed for the institution or restitution of conjugal rights. The defendant, Rakhmabai, admitted the fact of marriage, but repudiated it on the ground that it was celebrated before she had arrived at years of discretion. Her reasons for refusing to live with her husband appear to be :-(I.) Plaintiff's inability to provide for her residence and maintenance in a suitable manner ; (II.) Plaintiff's diseased state of health ; and (III.) the doubtful character of the plaintiff's relatives with whom he invited her to live. The Judge who decided the case in the first instance, without calling for any defence, threw out the suit on a preliminary ground, namely, that Civil Courts had no jurisdiction to entertain a suit of the kind. This, I may observe, was making the law and not declaring it. The plaintiff, Dadaji, appealed, and the Appellate Court consisting of Sargent, C. J., and Bayley, J. (now Acting C. J.), held that the jurisdiction of of Civil Courts was beyond question, and they remanded the case for further investigation. On remand, Rakhmabai failed to make out the grounds which she had advanced in support of her refusal to live with her husband, and the presiding Judge (Mr. Justice Farran) passed a decree ordering a restitution of conjugal rights. Against that decree there is an appeal by Rakhmabai pending decision. Before that appeal is decided, the present attempt at changing legislation is made. It will thus appear that there is no evidence before Government that Rakhmabai has refused to obey a decree of the Court, and that her imprisonment has been wantonly sought. So long as that is not made out, it appears to me that legislation on mere speculative grounds would be unjustifiable.

3. The only fact now before Government upon which the present legislation can proceed is that the defendant, Rakhmabai, has expressed her dislike of the plaintiff, Dadaji, without proving the existence of any grounds for such dislike. Under these circumstances, the abstract question which arises for consideration is whether Government should use its coercive power to bring together a married couple. The letter under reply appears to concede the proposition that Civil Courts should have jurisdiction to entertain suits for restitution of conjugal rights. But a merely declaratory decree is of no use unless it can be made the means of some relief. Now, the present enactment provides that wilful disobedience of a decree for restitution of conjugal rights may be followed by an enforcement of it by imprison-

ment or attachment of property or both. The proposed innovation seeks to abolish imprisonment as a mode of execution, and further to make non compliance with a decree for restitution of conjugal rights a ground for dissolving the marriage. This last proposal will have the effect of making marriage dissoluble at the mere will and caprice of a party and I cannot conceive a measure more calculated to revolutionize the marital law of the land than this will be. This proposal goes beyond any case that has ever come before the Government of India since the oldest days of the Empire. The provisions of Hindu Law treat marriage as so important a transaction in life as to justify their investing it with a peculiar sanctity, and restraining individual liberty in view of the good of society. Even in castes where divorce has come to be permitted by custom, it is never allowed merely on the wanton freak of a party without proof of any justifying causes. That law has, on the whole, been found to work well in the interest of millions, and I do not see anything, but pure mischief in the contemplated attempt of rudely disturbing it. Congregation in society is inconsistent with freedom from restraints of some kind or other on the individual units composing it ; and I am disposed to regard the evil, if, indeed, it is an evil, of having to use some slight compulsion to bring a wayward youth or girl to reason, as infinitely better than loosening conjugal bonds and reducing marriage to the level of ordinary trivial incidents of life. I am aware that this view is declared in the reference under reply as opposed to ' modern ideas.' But conscious as I am that my views are shared by the Hindu community generally, I feel compelled in the discharge of a sacred duty to state explicitly that I differ from the view enunciated in the above-mentioned reference. An English Statute (47 and 48 Vic. Cap. 68) has been placed before us for our imitation. With reference to that it is worthy of note that the above law was passed only in 1884 in England, and even then it was thought unsuitable to Scotland and Ireland (*vide* Section 7). The enactment does not appear to have been passed even for England after a full discussion. (See Hansard's Debates, Vol. 292, 3rd Series, Cols. 355 and 405). I beg leave to state that a ' modern idea ' of 1884, considered unsuitable to the circumstances of Ireland and Scotland, is not one which we need be in haste to foist on India. Besides Articles 34 and 35, Act XV. of 1877, and Section 259 of Act XIV. of 1882 of the Government

of India show what was thought of our own laws so recently. It is a trite saying that legislation far in advance of the ideas of the people is not only unprofitable but positively harmful. The provisions of Hindu Law as well as of British Indian Legislation (*vide* Section 36 of Act XV. of 1865 and Section 55 of Act IV. of 1869) show that employment of some degree of coercion in recognition of marital obligations has not been deemed to take away a nation's right to be called civilized. It is a pity that the public has not been told what materials the Government of Bombay had before them for declaring that a change had come about in the ideas of the people during the last two years. So far as my knowledge of native feeling on the question of divorce goes, that is distinctly against supplying facilities for it. The well-known words of Lord Stowell accurately represent the line of argument which passes in the minds of native thinkers.

4. "The Law," says Lord Stowell, "has said, that married persons shall not be legally separated upon the mere disinclination of one or both to cohabit together." Again, "to vindicate the policy of the law," says Lord Stowell, "is no necessary part of the office of a judge; but if it were, it would not be difficult to show that the law in this respect has acted with its usual wisdom and humanity, with that true wisdom, and that real humanity that regards the general interests of mankind. For though in particular cases, the repugnance of the law to dissolve the obligations of matrimonial cohabitation may operate with great severity upon individuals; yet it must be carefully remembered that the general happiness of the married life is secure by its indissolubility. When people understand that they must live together, except for a few reasons known to the law, they learn to soften by mutual accommodation that yoke which they know they cannot shake off; they become good husbands and good wives from the necessity of remaining husbands and wives, for necessity is a powerful master in teaching the duties which it imposes. If it were once understood that upon mutual disgust married persons might be legally separated, many couples who now pass through the world with mutual comfort, with attention to their common offspring and to the moral order of civil society, might at this moment have been living in a state of mutual unkindness, in a state of estrangement

* *Evans* vs. *Evans*, Haggard's Consistory Reports, 35.

from their common offspring, and in a state of the most licentious and unreserved immorality. In this case, as in many others, the happiness of some individuals must be sacrificed to the greater and more general good."

5. It is a matter of surprise that so radical a provision about divorce on the mere dislike of parties should have been introduced as a sequel to the main proposition with which the letter under reply starts, namely, that imprisonment is not a proper mode of the execution of a decree for restitution of conjugal rights. Here again nothing is said as to why imprisonment should be regarded as harsh. A decree for restitution of conjugal rights is a decree of specific performance, and imprisonment which the law imposes on its disobedience is more of the nature of punishment for contempt of Court than enforcement of the decree. Obligations of debt, decretal orders for costs, magisterial orders for maintenance, when disobeyed, entail imprisonment, and yet that kind of punishment is never objected to on the sentimental ground that imprisonment should be reserved for acts showing moral turpitude. Evidently there is to be one law for the husband, another for the wife; something which transcends the highest claim to equality. But it is said that imprisonment was not an indigenous mode of punishment in connection with marriage decrees. The law obtaining in the Native States of Baroda and Indore, which is acknowledgedly based on the existing practice, discountenances such an insertion. But supposing this was a creation of the British legislature, it is forgotten that it was in substitution of the usage of bodily handing over recalcitrant wives to the husbands. It is true that in all ancient communities imprisonment was not very frequently restored to; but that was, I apprehend, owing to the difficulty of keeping convicts confined in the absence of a system of jails. In this view imprisonment is itself a much more lenient mode of throwing obstacles in the way of dissolution of the martial tie, than the one which is acknowledged to have obtained in this country at one time. The removal of it, without the substitution of some other deterrent, seems to me to be fraught with evil consequences to the Hindu society.

6. In respect to the the third ground I beg to observe that a female cannot be allowed to back out of a marriage contract on the

ground of her non-age at the time of her nuptials without giving an equal facility to her husband to refuse her his society on the same ground. The alimony which para. 4 of the letter under reply seems to make a condition precedent for divorce would not be an adequate compensation for the loss of her husband's society, and that condition would be found more difficult to satisfy by females in the majority of cases than by males, because females generally do not possess much independent property of their own. The law will, therefore, be unequal and available only to rich women. I, therefore, think that the provision conceived in the interests of the woman, will, owing to its shortsightedness, be found more injurious to her interests than the present law.

7. In respect of the fourth ground I beg to state that the rite of marriage among Hindus is so intimately connected with their religion, that any interference with it, however distant, will not fail to create alarm. The discontent which a fear of their religious observances being interfered with will generate in the minds of the people will more than outweigh any good which might result in some adventitious cases like that of Rakhmabai. The day is yet distant when Rakhmabai's views will come to be shared by any respectable section of her countrywomen; and until that time arrives, I would deprecate the attempt to turn this stray case into a typical one and launch an unwelcome legislation on a conservative people like that of India.

8. Before concluding I would beg leave to refer to a proposition which has been solemnly advanced by some, that Hindu Law does not permit Civil Courts to take cognizance of such matrimonial suits, and lays down no punishment for disobedience of such decrees. Both these assertions are random statements and I am prepared to cite chapter and verse in disproof thereof. But seeing the decision of Sargent, C. J., in the Rakmabai Case, and the terms of the present reference, I feel that any such attempt would be a work of supererogation.

V. N. MANDLIK.

20th December 1887.

ANTIQUARIAN PAPERS.

OOMURKOT

AND

ITS SODA PRINCES.

[READ ON 8TH MARCH 1855.]

Oomurkot, so named after its founder Oomur, one of the Soomras, was built probably more than five hundred years ago. The Soomras held the place for about a hundred and fifty years, and were succeeded in the sovereignty of it by a warrior tribe, the Sodhas.

The Sodhas (or Sodas) are a branch of the great Parmar race which has spread, at different periods and in the numerous revolutions of former days, from that cradle of all the Kshatree tribes,—the province of Central India. Under various names this tribe has from remote times held sway in different parts of Central India and the adjoining countries.

One of these Parmars, named Bahudra (or Bahudrao), lived at Balmeer about 450 years ago. He was suceeded by his son Chhahudrao, who removed from Balmeer to Seew in Marwar. Chhahudrao had two sons, Sodha and Sankhlo, and one daughter, Sichya. The first of these made an expedition against Ruttakot (so called after a Moghul Rutto, its founder), and conquered it. Tradition relates that when Sodha killed the Moghul Rutto, his head, severed from the body, bounded down twenty-five steps from the threshold of his palace and there stopping exclaimed: "Your descendants shall reign for only twenty-five generations," a prediction which the people of the place (Oomurkot) consider fulfilled, inasmuch as they make out a list of twenty-five princes of the Sodha dynasty from the first Parmar Bahudrao.

Sodha, after taking possession of Ruttakot, transferred thither his seat of Government from Marwar. The ruins of Ruttakot are still to be seen on a sandhill which forms an island in the eastern Narra,

about twenty-five miles NW. of Oomurkot, and ten SE. from Khipra. It is between two small hamlets of Dilyear and Bhaeetee-ki-Bhit and about three miles from each. The only remains are heaps of burnt bricks covering a large mound. The bricks are of great size, fourteen inches by nine, and proportionately thick. Perhaps excavations and future research may bring to light in Ruttakot a second Bahminabad.

Sodha, as we said before, had removed his seat of government to Ruttakot, which was subsequently given up for Oomurkot where they displaced and succeeded the Soomras about 350 years ago.

Sodha left his throne and possessions to his descendants, who after his time, were no longer known as Parmars, but Sodhas or Sodas. The following is a list of Sodha Princes at Oomurkot, as found in the books of a local bard.

The first part gives the three Parmar princes, *viz.*, the grandfather and father of Sodha, and the chief himself; and the second, Sodha and his descendants.

I.—*Parmars.*

1. Bahudra (or Rao.)
2. Chhahudrao.
3. Sodha Rao.

II.—*Sodas at Oomurkot.*

1. Sodha Rao (the same as above 3.)
2. Chachuckderao.
3. Je Brumhurao.
4. Jeshudhrao.
5. Someshwur Rao.
6. Dhara Yureeshee Rao.
7. Doojunsul Rao.
8. Khirorao.
9. Avutarnde Rao.
10. Thero Rao.
11. Humeer Rana.
12. Veeso Rana.
13. Tejsee Rana.
14. Champo Rana.
15. Gango Rana.
16. Soortan Rana.
17. Ashkurn Rana.
18. Kesursing Rana.
19. Khimraj Rana.
20. Sugram Rana.
21. Shrivraj Rana.
22. Subulsing Rana.
23. Mehraj Rana, now living.

The Soda princes were at first called Raos, but the title was changed in the time of Soda Hummeer, who had the title Rana bestowed on him by the celebrated Akbur, who was born near Oomur-

kot during his father's flight towards Persia through Sind and Affghanistan. The title has descended in the family to the present day.

Although the Sodas have, since the founder of their dynasty, retained a hold over Oomurkot and its surrounding districts the sovereignty passed through different hands in later times. Thus, in A. C. 1746 Noor Mahomed Kalhora conquered the Sodas, and established his supremacy there. He demolished an old fortress and erected a fort. It stands on a sandhill on the edge of the desert, overlooking the vast plains of Sind, which extend from this spot in one unbroken level to the Indus, a distance of from eighty to a hundred miles. The fort is at present in a very dilapidated condition. The traces of a canal, by which, it is said, the stones for the fort were brought from Southern Sind, are still to be found on the plain below the fort. The stones, many of which are still covered with oysters and barnacles, are of the arenaceous limestone, and limestone conglomerate, common in Lower Sind. The canal is said to extend to Wanga Bazar and probably communicated with the Lukhput Kharee.

About half a mile NE. of the fort is still shown the spot where the Emperor Akbur the Great was born, as tradition states, in the open air under an "akh" bush (*Asclepias gigantea*), the only shelter his parents could find in their flight. "There *could* be no doubt of the facts," our informant, an intelligent old Sindee, stated, "as there was the 'akh' bush, and the emperor's name was Akbur," though etymologists will perhaps hardly agree with him; and, as the Ranas of Oomurkot assert that they obtained their title as a mark of the emperor's gratitude for hospitality shown to his parents at the time of his birth, they were probably not quite so destitute of accommodation.

During the time of the Kalhoras, the Sodas had charge of the revenue collections, the Kalhoras contenting themselves with a mere controlling power. One of these latter, Abdool Nubee, fell out with the Talpoors and, himself unable to be avenged on them, sought assistance from the King of Cabool, to whom the country was then tributary. The consequence was the despatch of a large force from that quarter, which devastated the country, and returned without accomplishing anything. This is said to have been in A. C. 1782. During the same year another force from Jodpoor, where Rana Vijayasing

then reigned, came at the invitation of another Kalhora prince ; but, instead of helping the Kalhoras against the Talpoors, they took possession of Oomurkot in their own king's name.

Oomurkot thus remained subject to Jodpoor until A.C. 1813 when the Talpoors attacked and conquered it. This happened at the time of Meer Kurum Alee Mahomed Alee in Sind and Raja Mansing at Jodpoor. From the Talpoors the birthplace of Akbur has, of course, come into hands of the British, with the rest of Sind.

The population of the Oomurka Talooka appears from the last census to consist of 20 485 souls. The number of houses is 5045. Oomurkot itself is a small Thurr town with 556 houses, and a population of 2,755 inhabitants. The style of houses is such as generally prevails in Sind. They are mud-roofed and very poor-looking, and the streets very dirty. The beehive-shaped hut, which is universal throughout the desert, is seldom seen in Oomurkot itself, though common in the neighbourhood.

The majority of the people of Oomurkot are Hindoos. Their style of dress is nearly a mixture of Marwaree and Sindee; as also their dialect, which largely draws upon the Marwaree from the contiguity of that frontier.

Oomurkot is the chief commercial town in the Thurr, trade being carried on through it with Kutch and Guzerat on the one side, and Marwar on the other. The principal staples are cotton and grain, but there are also various native dyed stuffs dealt in in small quantities.

PRELIMINARY OBSERVATIONS

ON A

DOCUMENT GIVING AN ACCOUNT

OF THE

ESTABLISHMENT OF A NEW VILLAGE NAMED MURUDA, IN SOUTHERN KONKANA.

Read at a Meeting of the B. B. R. Asiatic Society on the 9th February, 1865.

I PRESENT the Society this day with a translation of a Marathi document, which gives an account of the establishment of a new village in Southern Konkana, named Muruda. The original of the copy, which I also present, is in the possession of a Brahmana family surnamed Vaisampayanas, who are the Dharmadhikaris* or the chief moral and religious censors of the place. After this was obtained, I succeeded in getting a second copy of the same narrative, with a few unimportant variations.

The language of this document is somewhat different from the modern Marathi. It is written in the Modi or cursive character

---

* *Dharmadhikari* is the person discharging the duties of *Dharmadhikarana* which is "the office of watching over morals and manners, of enforcing observance of the ordinance of religion," &c. This office is higher than that of *Upadhyaya* or the priest whose duty it is to conduct all the [redacted] and ceremonies. Both offices are, however, sometimes combined [redacted]d the same person.

used in official papers and in ordinary business. It approaches in style the oldest Bakharas or Maratha chronicles, a large number of which deserve to be perpetuated, as furnishing important materials for the future historian of Maharashtra. Though no date is affixed, yet judging from the characters and the paper, it would appear to be above two hundred years old. The name of the author is also unfortunately wanting. It purports to give an account of the founding of the village of Muruda by a person from Upper India, named Gangadharbhatta, and reputed as a Kanoja* Brahmana. Throughout the paper, he is described as a Siddhapurusha or perfect man; by this name he is still known in the village. His annual funeral obsequies are still performed by his disciples, the Vaisampayanas, of whom there are about six families. The paper further goes on to detail the various social and religious festivals to be observed in the village throughout the year. Many of these still obtain. Some have become obsolete, while others have undergone a change. The principal observances, however, are still regulated according to the order laid down in this paper. The document itself, illustrating as it does, the manners and customs, rites and festivals, &c., of the inhabitants of a portion of this Presidency, I thought, would come within the scope of the Society's labours, and was worthy of being preserved as a record of institutions gradually passing away.

Muruda is a small village on the western coast of India, in the Ratnagiri District of the Presidency of Bombay. It is situated at a distance of 90 miles to the south of Bombay, on 17°42′ N. Latitude, and 73°8′ E. Longitude. It has 305 houses, and a population of about 1358 persons. The inhabitants may be divided into the

---

* *Brahmanas* are ordinarily divided into two classes viz. the *Gaudas* and the *Dravidas*. Each class consists of five sub-divisions. Thus, the five *Gaudas* are—(1) the *Gaudas* properly so called, and after whom the whole division is named, (2) *Kanoja* or *Kanyakubjas*, (3) the *Maithilas*, (4) the *Misras*, and (5) the *Gurjjaras*. The five *Dravidas* are—(1) the *Dravidas* from whom the whole class is so named, (2) *Tailangas*, (3) *Karnatakas*, (4) *Maharashtras*, and (5) *Kaunkanas*. Steel, in his summary of *Hindu* castes and customs (*p.* 85), puts the *Saraswatas* and the *Utkalas* instead of *Misras* and *Gurjjaras* amongst the Gaudas, and substitutes the [redacted] for the *Kaunkanas* amongst the *Dravidas*. I prefer the division above given.

following castes :—Chittapavana* Brahmana; Karada† Brahmana; Sonars [or Goldsmiths]; Kansars [literally workers in bell-metal, but now they work in almost all kinds of metals except iron and gold]; Bhandaris [or toddy-drawers]; Kunabis [cultivators or peasants]; Lingayata-guravas [worshippers of Siva, carrying a silver Lingam hung round their necks]; Sutaras [carpenters]; Nhavis [barbers]; Paritas [washermen]; Chambars [workers in leather]; and Mussulmans.

All the castes still follow their ancestral occupations, such as their names imply. But the principal employment of all, including the Brahmanas, is agriculture and horticulture. The nearest port to which the inhabitants resort is Harnai [popularly termed Hurnee] about 12 miles to the south-west of Fort Victoria. Betelnut is the chief article exported to Bombay, whence the inhabitants import all that they require. Except a small bit of about 8 miles between Hurnee and the Dapuli Sanitarium there are no good roads in the neighbourhood. Some have been planned and begun during the last two years.

The civil heads of this village are called the Karabharis or administrators, sometimes also called the Vartakas or leaders of the community. They are Brahmanas of the Chittapavana section, and are surnamed Balas (बाळ) and Bagulas (बागूल). There is no Patil or Sudra head-man in the village. His place is supplied by these Brahmana Karabharis. Of the village establishment of 27 officers, mentioned by Captain Grant Duff‡, the following persons are not

* This word is revilingly or jocosely derived from *Chita* (चिता) the pyre, and *Pavana* (पावन) or pure. The two together signifying 'pure from the pyre.' This rendering is based on a *Puranic* legend which relates that *Parasurama*, the sixth incarnation of *Vishnu*, recovered miraculously from the sea the strip of land now forming the *Konkan*, the *Savantwadi* territory, *Goa*, *Kanara*, and *Malabar*, and made it over to *Brahmanas*, converted into that state from corpses placed on the pyre. Others would resolve the word into (चित्त) and (पावन) the pure of heart. Both of these may be true, but the first has a historical value, as it seems to me to indicate that the first ancestors of this tribe have probably come by ships either from some other port in India, or from the opposite coast of Africa. This is a section of the *Kaunkana* sub-division of the *Dravida* class.

† This tribe also belongs to a section of the Dravida class.

‡ Grant Duff's History of the Marathas, vol. I., *pp.* 23—26.

to be found at Muruda:—viz., the blacksmith; the Mhara, or watchman; the Manga, or basket-maker and executioner; the Gavandi or potter; the Bhata, or bard; the tailor; the Koli, or water-carrier; the Tural or Yeskar; the porter; the gardener; the "Dowri-Gosai," a sort of religious ascetic; the Ghad-i, or piper; the Ramusi, or Bhila; the Tamboli or betel-leaf-seller; and the Gondhali, or kettle-drum beater.* Instead of the Muhammadan Mullana for killing sheep, there is a Kazi, who has charge of the village mosque.

The exact period when this village was founded it is at present impracticable to ascertain. The Vaisampayanas pretend that the colonization of the place and the creation of their hereditary office took place nineteen hundred years ago. But they have no data to prove this. All that I have been able to gather tends to fix the period somewhere in the 13th or the 14th century of the Christian era. The age of the document, the existence of several old temples and other monuments, and various local traditions, prove the establishment of the village to be at least four hundred years old.

The narrative states that Muruda was a jungle, and served as Rudrabhumi † or burning and burying ground, of the neighbouring village of Asuda. Two persons, named Gangadharabhatta and Padmakarabhatta, with a third companion, named Vaisampayana, came to Asuda; the last is described as the disciple of Gangadharabhatta, who looked upon him as his son. They formed a plan of founding a new village. With the permission of the people of Asuda, the jungle was cleared. The "perfect man" or sage applied to a neighbouring king of the Sekara dynasty, then reigning at Jalagama, a town about 8 miles to the south-east of Muruda, and named Jalandara. From him a grant of land from the adjoining villages was obtained. The different parts of the village were assigned to the first families of settlers. Thirteen families of Chittapavana Brahmanas are enumerated as those to whom the sage gave lands and offices in the village. ‡ The duties of the several village officers were laid

* Duff's History of the Marathas, vol. I. *pp.* 23—26, Note.

† From *Rudra*, the last of the Hindu triad or the destroying principle, and *Bhumi*, earth.

‡ They were (1) *Vaisampayanas*, (2) *Dataras*, (3) *Bhaves*, (4) *Nenes*, (5) *Balas*, (6) *Parajapes*, (7) *Josis*, (8) *Sutaras*, (9) *Gokhalas*, (10) *Karandikaras*, (11) *Koparakaras*, (12) *Godboles*, and (13) *Dharapas*.

down, chiefly in social and religious matters. The boundaries of the several properties were marked off by stones called Gadadus [*i. e.* stones fixed in the soil] and were likewise guarded by Kshetrapalas, or tutelary deities. Several inferior shrines were also set up for the more ignorant classes. The principal temple of the village was built, and an image of the Devi in one of her milder forms, as Durga,* was installed.

A certain quarter of the village was set apart for the Yavanas. Regarding this, the narrator states: "now the sage saw in his mind that hereafter the kingdom of the Yavanas would come; therefore to the north of the village, and beyond the boundary-stone, a Sunyalaya † [*i. e.* the abode of nothing] was built. To the east of

---

* She is represented as a beautiful woman with eight arms, riding on a tiger, and in a menacing attitude, as if advancing to destroy one of the giants, for whose annihilation her incarnations were assumed. In Bengal and other provinces she is worshipped in more hideous forms as *Kali* or the destroyer. Human sacrifices were formerly offered there. [Elphinstone's India, Book II., chap. IV. *pp.* 90 and 91.] And even now sheep and goats are sacrificed daily. Such is not the case at *Muruda*, nor indeed in this part of the country generally. It is only to the *Grama-devatas* or the low deities that animals are now sacrificed.

At the temple of *Mahalaxmi* at Breach Candy, in the Island of Bombay animals were sacrificed. Since the ascendancy of *Jainism*, however, animals are not permitted to be killed. A sepoy of the committee of Pinjarapole [or the Asylum for Animals] is now always stationed at the temple, and when any animals are offered, they are taken by him in charge and sent to the Asylum, the priest contenting himself with the pecuniary and other offerings which always accompany such sacrifices.

† *Sunyalaya* [or the abode of nothing] is no doubt here employed to designate a mosque. *Sunya* means nothing, and *alaya*, *sthana* or place, and as there are no images in mosques, the term must have been contemptuously applied to them. It is curious, however, to note how contracted the writer's knowledge and view must have been. For one of the most celebrated Hindu temples in Southern India is actually a *Sunyalaya*, or a temple without an idol. I allude to the renowned Pagodas of *Chillambaram*, as they are called by European writers, or *Sidhambaram*, as they are called by the natives of Southern India. The *Chillambaram* Pagodas are situated on the sea coast of the *Karnatic*, a little to the south of *Porto Novo*, 120 miles S.S.W. from Madras. Lat. 11°27', N., Long. 79°52' E. Hamilton [*vide* his East India Gazetteer, published in 1815, *p.* 275] describes it as a place of great sanctity,

the 'abode of nothing,' and beyond boundary-stone, on the west side, a spot was preserved for the Yavanas." This statement, although written in a prophetic style, is clearly indicative of the fact that the settlement of the place was planned and carried out after Allauddin Khilji's invasion of the Dekkan,* and probably about the time the Bahamani † kingdom was founded.

After the account of the allotment of the different quarters of the new settlement, there follows a detailed description of the different social and religious festivals to be celebrated at the place. The year commences with the first of Chaitra [March and April], which is the Varshapratipada, or the new year's day of the Saka year. On this day, all the inhabitants assemble in a small temple of Devi, near the

---

and so does Viscount Valentia in the account of his Voyages and Travels [*vide* Vol. I., *pp* 370 and 371]. Both of them, however, being probably unable to gain access to the principal shrine, describe the Pagoda as containing images.

A Hindu friend who saw the place writes to me that—"It is a fact worthy of notice that there exists in Southern India, at a place called 'Chillambaram' (properly *Sidhamba*), near Porto Novo, a Siva temple of great renown, where the object of worship is [*Sunya* or] *vacuum* itself. True, there are numerous images of gods and goddesses to be found in its subsidiary shrines; but THE shrine of the temple is devoted to only empty space. It is enclosed by a superb structure of sandal-wood work, and profusely decorated with gold and silver plates. A thick curtain screens the interior from all human sight, save that of the high priest, who is permitted to enter it but once in every year. The analogy which might be traced between the ceremonial worship of the ancient Jews and that of the Hindus would appear to receive a fresh support from the clear resemblance which the *Sanctum Sanctorum* of their tabernacle bears to this ancient sanctuary of the *Hindus*. The worship here is very solemn: no dancing is permitted as in other temples; and it is also curious to note, that *Sidambra* is scarcely ever resorted to by pilgrims, who have for their object wordly gain or gifts Tired of the world and its vanities, the southern Hindu seeks this place, to spend his days in the service of his god, in acts of charity, or in meditation and prayers that might befit him for the final absorption with the unseen spirit, which is the object of adoration at *Sidambra*."

I think *Sidambara* is a corrupt form of *Chidambara*, from *chit*, intelligence and *ambara*, atmosphere: the compound signifying the atmosphere or region of intelligence. *Ambara* also means a garment, but that signification does not appear to me to be adapted to this place.

* In A.C. 1292 A.H. 693; *see* Elphinstone's India, *p.* 334.

† A.C. 1347. Grant Duff's History of the Marathas, vol. I., *page* 33.

large temple dedicated to the same goddess. The head village officers, before repairing to this temple, proceed, in company with some other inhabitants, to pay visits of condolence to persons who have lost their relatives during the last year, and conduct them to the great temple, with the flutes playing, and the drums beating. They are thence led to the small shrine in the vicinity above alluded to, where other inhabitants have already assembled, and where the Josior village astrologer reads the horoscope of the year, and foretells the events or fortunes of the year, as calculated and determined astrologically. The ceremony begins with the usual prayer to Ganapati [or the god of the people], and ends with the customary benediction to the audience. The leaves of the Nimba (*Melia Azadirachta*) are afterwards distributed and chewed by the people, who also partake of them generally at their houses after their morning prayers or breakfast, as preventives of disease, and promoters of life and wealth.*

For nine days the image of Devi in the principal temple is decorated with flowers, &c., and at the end of the ninth day, a small silver mosque of the goddess is placed in an artificial temple or car called Ratha,† which is carried through the streets of village on

---

* This custom is founded upon the authority of the following verse from *Jyotirnibandha* (or an Essay on the Stars) :—

ज्योतिर्निबंधग्रंथः—तैलाभ्यंगं स्नानमादौ च कृत्वा पीयूषोत्थं पारिभद्रस्य पत्रम् ॥
भक्षेत्सौख्यं मानवोव्याधिनाशं विद्यायुः श्रीर्लभ्यते वर्षमूले॥१॥

"At the beginning of the year, after rubbing the body with oil, and bathing, man should eat the leaf of the pleasure-giving, wholesome tree of *Nimba*, which has been produced from nectar, whereby learning, health (or long life) and wealth are obtained."

† *Ratha* signifies a car. Most of the *Vaishnava* temples throughout India have large wooden cars, in which an image of *Vishnu* is placed, and drawn by large crowds of devotees at certain festivals, the car of *Jagannatha* being the most celebrated. The practice, in all likelihood commenced with the *Budhists*, who are described by the Chinese travellers, *Fahian* and *Hiuen Thsang*, as on various occasions leading the images of *Sakyasingha* in cars. Perhaps the want of roads and the impracticability of moving any cars, led to the substitution of small wooden temples, which, however, in the present case, is called a *Ratha*. Many temples have *palanquins* instead of cars wherein the image is placed and carried about.

men's shoulders, all the householders performing worship as it goes round to their houses. All the details mentioned in the accompanying translation with regard to this festival are still observed. But the zeal of the people has considerably abated.

The ceremonies during the next three months are rather unimportant. The festivals during the 5th month, *i. e.* Sravana [July and August], are still kept up. People are invited on the 8th day of the first half of the month for prayer, but only a very small portion actually goes to the temple. On the 15th of the same month, the village priest still performs the Sravani [or the annual ceremony of changing the sacred thread]* for the entire community, in the village temples where it used to be performed—perhaps two hundred years ago. Population having increased, many of the villagers now have this ceremony done at their own houses. It is curious that the Dipavali or the festival of lamps is not provided for in this narrative; but that is also duly celebrated, and is one of the best of native festivals. There is nothing worthy of particular mention until we come to the 11th of the first half of the month of Kartika. On this day the ceremony of *Madherun* [or the little corpse] was formerly performed. A bier was constructed and a living man was placed thereon and carried round the whole village in commemoration of the first sacrifice which the village-devils are said to have exacted

* The alterations which this ceremony has undergone illustrate the vast change that has overcome *Hindu* society. *Sravani* has, properly speaking, very little to do with the changing of the sacred thread. it is a sacrifice performed to atone for the neglect of the study of the *Vedas* The ceremony consists of two parts, viz., *Utsarjana* [or abandoning the study of the *Vedas*], and *Upakarama* or *Upakarana* [*i.e.* the resumption of Vedic studies.] The first should, strictly speaking, be performed in the month of *Magha* [February and March], and the second in *Sravana* [July and August]. When people really studied the *Vedas* for their own sake, these ceremonies had a meaning. At present, the relation of *Sravani* with *Vedic* studies is not generally understood; and the whole ritual has become an empty farce. The eating of the *Panchagavya* [or the five products of the cow] at the time of the *Sravani* is also an innovation not sanctioned by the old authorities, but engrafted on the original by ignorant people, who fancy that this ceremony consists in eating that, and in changing the sacred thread.

from the sage. Whatever the reason, it is clear to me, that this custom points to a very remote period, when human sacrifices prevailed. Happily there is no such custom now at this village, but it still obtains amongst the lower classes in the town and island of Bombay and other towns in this Presidency, and is observed chiefly during the Holi festival.

After Kartika, there is nothing remarkable till the month of Phalguna, when the Holi festival is celebrated. This Hindu saturnalia has lost much of its prestige. The grosser rights connected with it are now performed only by the more ignorant people, and I am happy to say that it is gradually losing its hold on the popular mind.

It would be tedious to dwell in this abstract on the minutiæ of the festivals and ceremonies, for which I must refer to the accompanying paper and translation. The presentation of Gandha [or perfumes], Vidas [or packets of betel-leaves, betel-nut, &c.], and either fruit or clothes is regulated according to the rank of the recipient, and the orders on this subject, as well as the places where the inhabitants and their guests are to sit, are laid down in detail. Certain public dinners are provided for. An interchange of oblations offered to the Simadevi [or boundary goddess] is directed on one occasion; and although it is laid down that the Brahmanas should receive oblations offered by other Brahmanas, the distributor and the director of the ceremony is the Sonara or goldsmith of the place, who comes in for a large share of various other village honors. Agricultural communities are more or less conservative, but the above circumstance and several other points in the narrative incline me to the opinion that there was not so much squeamishness about eating and not eating with particular persons, provided their status was equal, and their habits of life the same or similar.

Besides religious festivals and public social gatherings, the narrative gives no account of the inner life or civil administration of the place. In a former part of this paper I have stated the number of inhabitants, their castes, and occupations. The only circumstance that is yet to be noticed is the free intermixture of the Karada and Chittapavana Brahmanas at Muruda. Such relationships, though condemned by the more aristocratic families, are now contracted

without scruple, and they involve no pains and forfeitures, either social or religious. The Karada families are now only distinguishable by their Gotra.* This might perhaps serve as an example to other communities which rejoice in hundreds of subsections of the same section or caste.

My object in laying this paper before the Society is to indicate in what direction information may be sought, such as would in course of time furnish materials for a more or less complete history of village life and institutions of Western India. The difficulty is to get old documents and information. I believe that old private records do exist in different villages, and with many of the oldest families. How to get at them is the question. For, since the days of the Inam Commission people have become so very suspicious that they will not

---

* The author of the *Dharmasindhu* states that:—विश्वामित्रोजमदग्निर्भरद्वाजोथगौतमः ॥ अत्रिर्वसिष्ठः काश्यप इत्येते सप्तर्षयः॥सप्तानामृषीणामगस्त्यष्टमानांयदपत्यं तद्गोत्रमित्याचक्षते॥the descendants of the following eight *Rishis* are called *Gotras*, viz: (1) *Visvamitra*, (2) *Jamadagni*, (3) *Bharadvaja*, (4) *Goutama*, (5) *Atri*, (6) *Kasyapa*, (7) *Vasishtha* and (8) *Agasti*. *Gotra*, therefore, means a *clan*. The *Chittapavana Brahmanas* are descended from the following 14 *Gotras*:—

वत्स, भारद्वाज, गार्ग्य, कपि, आत्रि, कौशिक, काश्यप, शांडिल्य, वासिष्ठ, कौंडिन्य, बाभ्रव्य, नित्युंदन, विष्णुवर्धन, जामदग्न्य.

A person who does not belong to one of these 14 *Gotras* is not a *Chittapavana Brahmana*. According to the author of the *Dharmasindhu* the principal *gotras* are 49 in number. They are as follows:—

7 *Gotras from* भृगु.
1. वत्स.
2. विद.
3. आर्ष्टिषेण.
4. यस्क.
5. मित्रयुक्ष.
6. वैन्य.
7. शुनक.

17 *Gotras from* अंगिरस.
8. अयास्य.
9. शारद्वत.
10. कौमंड.
11. दीर्घतमस.
12. करेणुपालय.
13. वामदेव.
14. औशनस.
15. राहुगण.
16. सोमराजक्य.
17. बृहदुक्थ.
18. शारद्वत.
19. अभिजित.
20. रौहिण्य.

show even their Pothis [or religious books] for any consideration, for fear they might be deprived of them.

There being no map of the Konkana, either in this Library or in that of the Geographical Society, the sketch which illustrates this paper was prepared from a large map in the possession of Dr. Bhau Daji, to whom I am indebted for many valuable suggestions, and for the free use of his splendid library.

Translation of a Document giving an Account of the founding of the Village of Muruda, in Southern Konkana.

[About one page has been lost, and the first sentence of what remains begins thus :—] Looking, it came into his mind to found a village at this place. So thinking, they came to the village of Asuda. There they inquired of the villagers, and both of them, together with their disciple Vaisampayana, went to Gohagara. After arriving there, that spot was fixed upon for Padmakara Bhatta Siddhapurusha [*i.e.*

---

21. भारद्वाज.
22. गर्ग.
23. ऋक्ष.
24. कपि.

14 *Gotras from* अत्रि.

25. अत्रि.
26. गविष्ठिर.
27. वाद्धुतक
28. मुद्गल.

10 *Gotras from* विश्वामित्र.

29. कुशिक.
30. लोहित.
31. रौक्षक.
32. कामकायन.
33. अज.
34. कत.
35. धनंजय.
36. अघमर्षण.
37. पूरण.
38. इंद्रकौशिक.

3 *Gotras from* कश्यप.

39. निध्रुव.
40. रेभ.
41. शंडिल.

4 *Gotras from* वसिष्ठ.

42. वसिष्ठ.
43. कुंडिन.
44. उपमन्यु.
45. पराशर.

4 *Gotras from* अगस्ति.

46. इध्मवाह.
47. पूर्णमास.
48. हिमोदक.
49. पाणिक.

a perfect man], to found a village, and himself, together with the disciple, returned to Asuda, where he lived. He then asked the grant of the Rudrabhumikà [or burning and burying ground of the village], and began to clear the jungle. In the course of cutting the jungle they came to a large banian tree (*Ficus religiosa*) in the centre of the place. The [perfect man or] sage thought that it should be cut down, and accordingly, with ten or twenty Brahmanas and the disciple Vaisampayana, he began to have the tree cut. At that time the Brahmana Datara, whilst laying the axe on the tree, died. Thereupon the sage looked within his mind, and saw that there were many devils, and [also] a goddess in the banyan tree. Thereupon, by praying to that goddess and restraining the devils, he caused the Brahmana to be resuscitated to life. All the jungle was afterwards cleared, and the spot was prepared [for habitation]. The sage Gangadhara Bhatta and the disciple Vaisampayana, afterwards went to the Karnataka district, and brought images made of stone [called the] Gandaki stone. Of these, he kept one with himself; the second he sent to Gohagara and the third to Diven.* When he commenced to establish or consecrate the image of this place, he caused the ceremony of consecration to be performed by the Vaisam-

* Tradition describes this to be the village now called Divenborali, in the Habsi s territory. The three images at Divenborali, Muruda, and Gohagara, are considered by the people to be sisters, although all of them being the images of the same goddess, Devi, one would suppose the new relationship to be superfluous. It is said, and is still believed by the bulk of the people, that during the annual festival in the month of Chaitra when the *ratha* or car of the goddess is carried to a particular place at Muruda, a kind of spiritual communion takes place between that image and the image of Gohagara, and at that time, if a person be frying *vadas* [a kind of native cake] [in sweet oil raised to a very high temperature], he can take out the *vadas* from the boiling oil with his hand without burning his fingers, the oil being said to be miraculously cooled on that particular occasion, in consequence of the spiritual meeting of the goddesses. I have never yet been able to get hold of a person who could say of his own knowledge that such a thing had ever happened. The answer to an inquirer generally is—"what is difficult for God to do?" This appears to me a priestly trick, like the congealing of St. Januarius' blood and others in the various countries of Europe and Asia. The word *Diven* is most likely derived from *Diva* (heaven), whence also *Devi*, a goddess of heaven.

payana, and the image was enshrined.* Afterwards, with the view of establishing the Vatandaras [or hereditary people] of the village, he first settled the Vaisampaynana and the Datara, giving to the former the Upadhyepana,† and to the latter the authority to worship the Sri or goddess. And, as there was no pasturage for cattle in the place, the sage Gangadhara Bhatta went to, and asked a spot from Jalandhara Raja, of the Sekara dynasty, who was [then reigning] at Jalgam. He thereupon asked land from the [surrounding] four villages of Asuda, Phanasu, Gimhavanen, and Karaden, as a vatana [*i.e.* hereditary property], and gave it to the sage, who had it determined that no other person except the sage had any proprietary right in that land. Taking leave of the king, he came to his village, and within the four boundaries thereof established gods and shrines in different localities for restraining the devils, and [in this manner] with the Bhadragiri mountain to the south, Chandragiri mountain to the north, the Asava river to the east, and the sea to the west, within these four boundaries he began to establish [colonies of] Brahmanas, commencing from the south. On the side of the river he established the tutelary deity of the village, and kept a straight road to the west of it; and to the west of this road he assigned a place to himself, and there established his disciple Vaisampayana, whom he looked upon as his son. To him he assigned his honors of seniority, the gandha‡, the vida§, and dharmadhikara¶. And there a gadadu or guardian idol was installed‖; and a

* In the principal temple in the midst of the village, where it stands to this day.

† The office of performing sacrifices. The term is now applied to the village priest who conducts all the usual Hindu ceremonies.

‡ *Gandha* signifies a fragrant substance, but here it means sandle wood powder, which, mixed with water, is applied to the foreheads of persons assembled on the occasion of social and religious festivals, according to the warrant of precedence.

§ Packet of betel leaves made up with betel-nut, lime, spices, &c. This is generally chewed by the natives after meals, but is also presented to guests and visitors as a mark of honor.

¶ Authority to expound the social and religious law to the villagers.

‖ *Gadadu* means anything driven into or buried under the ground. There are a number of idols with this appellation. They are blocks of stone, and are evidently the boundary marks of the different *Thikanas* [or holdings] assigned by the sage to the first settlers. They appear to have been installed to inspire a sort of religious awe amongst neighbours about the sacredness of property.

Niragunda Devi* was installed by him in his own grounds for the preservation of kine. To the north of his own place he left a way to go to the burning-ground, assigned a spot for women going to immolate themselves with the corpses of their husbands to sit upon, and to the east of the straight road established Lakshmi Narayana, and assigned the Brahmana Bhave to his worship, giving him a spot of ground close by, where he was made to stay. To the east thereof the Bahiravadeva and Kalikadevi were installed, and in their vicinity, a number of tutelary deities were established. A road to go to their temples was kept. To the north of the road leading to the burning-ground, the disciple Vaisampayana was established, and to him the office of priest to the whole village and to all the gods in the temples was assigned. To the north of the latter, a Brahmana, [sur] named Nena was established. To him the authority of Mahajana† was given. To the north thereof the Brahmana named Bala was established. To him the authority of Vartaka‡ was given. To the eastward thereof a road to go to the mountain was kept. To the north thereof the goddess Varadakshayani§ was installed. Thereafter, to the west of the straight road [leading from south to north] Sri Ganga Narayana was established, and to the worship thereof the Brahmana Parajapya was appointed. To the north thereof the Brahmana Josi [*i e.* the astronomer) was established. To the north of that a tutelary deity was installed. To the north of that again the Brahmana Sutara was established; to him the authority of Vartaka was given. To the north thereof, a road going from east to west was kept. To the north of this, and in the centre of the village the establishment of Sri (*i.e.* the Devi, or Bhavani,) was made in the beginning. To the east thereof four gods were installed. To the north thereof the Brahmana Gokhala was established. To him the

* A local deity, so named after a shrub which grows wild at this spot and is called *Niragundi* or *Vitex Negundo.*

† *Mahajana* means a great man. Here it is the designation of certain hereditary officers, who have no political privileges, but have a certain precedence allowed them on social occasions in the village.

‡ *Vartaka,* literally a manager. The different *vartakas* are a kind of village wardens, and have the custody of the temple and its property, and certain precedence on social as well as religious occasions.

§ Varadakshayani, the granter of vows.

office of (her) worship was assigned. Thence a straight road to the temple of Mahadeswara was made. In the middle thereof a tutelary deity was installed, and to the east, in the vicinity of Sri Maharudra [the aforesaid Mahadeswara] also, was another tutelary deity installed. To the east and west and to the north of that, tutelary deities were established in different places. Near the Sri, on the north side there was a self-made goddess, Svayambhuva (devi), in the banyan tree, which was installed at the very spot near the Sri. Also a tutelary deity was installed. Near the Subhadevi, on the north side, the Brahmana Datara was established. To him authority to worship was given. To the north thereof the Brahmana Karandikara was established, to him the rights of Mahajana were given. To the north the Brahmana Koparakara was established. To him the rights of Vartaka were given. To the north thereof, and to the east and west of the road, passages for going to the burning-grounds were kept. To the east of the straight road [from south to north] Sri Nagleswara was enshrined. Close by, the Brahmana Gokhala was established, and to him the right of worship was given. To the west thereof the goddess Chandrabharadi was established. To the east of Nagleswara a tutelary deity was installed. To the west of the straight road, on the side of the Gadadu-stone, the Brahmana Dharapa was established To him the rights of Vartaka were given. To the north thereof place was assigned for a Sunyalaya [or the abode of nothing]. * To the east thereof a path to go to the village of Asuda was kept, and on that path a tutelary deity was established. To the east thereof, and to the north of the mountain in the vicinity of the river, a tutelary deity was installed. A Gadadu-stone was fixed to the south of the abode of nothing." To the west of that Gadadu a goddess, named Banachi † was established in the bana or forest. To the north thereof, beyond the river, and underneath the Chandragiri on the sea-shore, the Simadevi [or boundary-goddess] was established. A

* *Sunyalaya*, or the abode of nothing, appears to be the name applied to a Muhammadan mosque, and it combines as well the physical fact of there being nothing in the place, and a sort of suppressed ridicule of the followers of a faith whose temples are "abodes of nothing."

† *Bana*, forest; hence *Banachi*, belonging to a forest.

Sonara was appointed as her worshipper. In this manner gods and temples and other tutelary deities, were established in different places, to restrain the devils. Other Vatandaras were also established in different places, and between the properties of the Vatandaras, Gadadu-stones were fixed. [Now the sage] saw in his mind that hereafter the kingdom of the Yavanas would come ; therefore to the north of the village and beyond the Gadadu-stone, an 'abode of nothing' was built. To the east of the 'abode of nothing' and beyond the Gadadu on the west side, a spot was reserved for the Yavanas ; and plots on this and that side of the Gadadu-stone were reserved for other castes. In what manner the Vatandars should conduct themselves from the 30th of Phalguna is laid down as below :—On the 30th, *i.e.* the day of the new moon, the Datara should send invitations from the Sri, or goddess, throughout the village for the Vasantanavaratra, *i.e.* the first nine days of the first bimestre of the Hindu year.* On the 1st of the first fortnight of the month of Chaitra the trumpeter should blow the trumpet at the house of each Manakari [or privileged person]. In the temples of Sri and Subhadevi the ground should be cowdunged, cleaned, and bedecked with streaks of ashes of rice-husks, turmeric, &c., and something should be spread for people to sit upon. Afterwards the goddess should be bathed early in the morning with water [by the slight ablution called Malasnana]. Cisterns at the door of the temple should be filled with water for the villagers to wash their feet, and for sipping the water with the palm of their right hands [before entering the temple] The priest, Vaisampayana, should repair in the morning to the temple of Sri ; and on his arrival, the Datara should give him a seat, and. should come to worship the image with the necessary materials for worship. The Datara should perform the worship and the Vaisampayana should dictate how to do it ; and [the latter] should always expound the Puranas. And after the villagers have come to the temple of the Sri, five or ten of them, together with the Mahajana, the Vartaka, the Upadhyaya, the Josi and the Datara, should go to the house of whosoever may have lost a member of his family, and [all of them] should honour the bereaved, and should conduct him to the

* The trumpeter goes round and stands before each house, blows the trumpet for a few seconds, stops and calls out, "I am come from the goddess to invite you to the Chaitra festival, hoh !"

temple of the Sri, with the flutes playing and the drum beating. And after the bereaved persons are so brought, all should assemble and sit in the temple of Subhadevi, and thereafter, the Josi should stand near the goddess, and read the calendar for the year to his audience keeping the same afterwards in the temple of Sri. After it is kept the Datara should distribute Vidas. Thereafter, the Vaisampayana should sit near the goddess, and read the letter of invitation in the technical language of the Siddhapurusha* [*i. e.* the sage who founded the village], and on that day a letter [of invitation] should be first written to the good Brahmanas at Muruda.† After the reading of the letter, the Datara should give to Vaisampayana the Gandha, Vida, and Sidha.‡ Thereafter Harikatha, or preaching after the usual mode, should be held, and at its conclusion, Gandha, Vidas, and Dakshana ¶ should be given to all; after which all should go to their homes. After the villagers have retired, the Datara should spread carpets, &c., for people to sit upon and to listen to the Puranas § and Katha ||, in the evening; for the reader of the former [*i. e.* the Puranas] he should provide a seat and a lamp. At the conclusion of the Puran and Katha [respectively] Gandha and Vidas should be distributed. In this manner people should go on till the third, on which day the Sonara and the trumpeter should invite all the people of the village for the Chaitra festival of the boundary-goddess [Sima-devi]. On the fourth day [of Chaitra] all should go to Sima-devi to dine with oblations of eatables. On the morning of that day the Sonara should take from the Datara the masque [of the goddess] to

---

* *Siddhapurusha* is derived from *Siddha*, perfect, and *purusha*, man; properly it means an ascetic who by mystical and austere practices is reported to have obtained supernatural powers.

† This is a letter addressed in the name of the people of Muruda to the people of (1) Muruda itself, (2) Anjarlen, (3) Kelasi, and (4) Velasa, inviting them to the Chaitra festival. It is written in Sanskrita.

‡ Uncooked food.

¶ Small presents in money.

§ Some *Puranic* work is read and explained, and this is popularly called *Purana*.

|| An itinerant preacher stands, and taking some moral texts illustrates them by arguments as well as legendary tales; and this mode of preaching is called *Katha*.

be put on the face of the idol. After the people have gone to dine, the privileged men should get the oblations as detailed below :—

2 oblations to the Mahajanas.
4 do. to the 4 Vartakas.
2 do. to the Upadhyâ-dharmadhikari.
1 do. to the Josi.
1 do. to [2 letters lost].
1 do. to one Datara.
5 do. [to whom, it is not clearly stated].
4 do. to the authorities of the 4 temples.
1 do. to the Kharavala.

The Sonara should cause oblations to be given to the Vatandara Brahmanas by the [other Brahmans] villagers, taking and receiving for each other [in exchange] ; and 5 oblations to the Marathas and other castes, and the Gurava [*i. e.* the officiating Sudra priest] of the idol Bahiri.

5 oblations to the Gurava of the village Asuda.
5 do. to the barber.
5 do. to the Vatandars of Saladuren [here spelt Saladula].
5 do. to the carpenter.
3 do, to Sonu, the bricklayer.
5 do. to the Gavada [*i. e.* a caste of Hindus who manufacture salt].
2 do. to the Varika [a sort of village beadle].

Altogether 6 oblations.

5 oblations to the trumpeter.
5 do. to the tailor.
5 do. to the washerman.
2 do. to the gonwala.
2 do. to the oilman.
1 do. to the copper-smith.

In this manner, the oblations should be distributed by the Sonara. After the dinner is over, the Josi should read the Panchanga,*

* Almanack.

and the Karbhari * should give to the Vaisampayana a blank paper for writing a letter†. Thereafter a preaching should be held. The Datara should give the Gandha and Vida, first to the Vaisampayana, and [afterwards] to the Josi, and the Mahajana Vartaka, and to every one else also. Thereafter the Vatandar [officer for the year] should give to the trumpeter Onwalani ‡ [*i. e.* wave offering], out of the money from the Inam amount of the village. Thereafter the Datara should take the masque [in his hand], and with all the other villagers should come by the western road, along the sea-shore, *vajat-gajat* [*i. e.* beating tom-toms and trumpeting]. On the way, when arrived opposite to the "abode of nothing," the musical instruments should not be played upon for a moment. Thence they should come into the quadrangle facing the temple of Sri Durga. On arriving near the temple of the Sri, the villagers who may be near the temple, and those who have come along with the masque, should embrace and salute each other. Thereafter the Ratha or car of the goddess should be lifted up; the Datara should mount it, and it should then be brought by the Brahmanas in the Pentha or quadrangle; and the Datara should offer incense and prayer to all the gods, after which the Ratha should be kept in its proper place. Thereafter, people should go to the temple of the goddess, and the Datara should distribute Gandha and Vidas according to the order [laid down]. All should then go to their respective homes. At night the flute-player should accompany all the privileged persons to the temple, from the Gadadu or boundary-stone of the sage's holding. After they have arrived, whoever may not have come, should be invited and brought by the Vartaka by order of the Mahajana Vartaka. The Datara should spread carpets, &c. to sit upon, and have the lamps lighted. The expounding of the Puranas and preaching should then be held, and at their conclusion the Datara should distribute Gandha and Vidas in the

---

* Manager of the village.

† This is the letter inviting people of other villages to the annual festival [*vide* note †, *page* 217].

‡ *Onwalani* or wave offering, from *Onwalanen*, to wave. A platter containing lighted wicks, a box of turmeric, and sometimes betel-nuts, and a few coins are taken around the head of a person or idol, for the removal of all troubles and evils, and also in consecrating; and any money put into the platter by other worshippers as an offering, is called the *Onwalani*.

order laid down ; and Gandha should also be applied [to the forehead of], and Vida given to the Sonara. In this manner, the Navaratra [or nine nights] should be spent. The Josi should read the Panchanga every day in the temple of the goddess. On the morning of the 5th day, the Gurava or flute-player should play at the temple of the goddess, and the houses of the privileged persons, in the following order :—

First of all in the court-yard of the temple, that is, once in the courtyard which is that of the temple as well as of the Datara [Brahmana] and again in the vicinity of the other gods. Thence to the privileged person ; thus : near the door of the Mahajana [sur] named Nena ; thence near the spot of the sage opposite the door of the Vaisampayana ; afterwards opposite to the door of the Balavartaka ; thence opposite the door of the Upadhya ; thence opposite the door of the Dharapa. Before the Dharapa, the instrument should be played upon opposite the door of the Karandikara Mahajana ; thereafter, opposite to the door of the Josi ; thence opposite the door of Sutara-vartaka ; thence opposite the door of Koparakara-vartaka ; thence [about 3 letters lost]. In this manner, in the morning, in the noon, and in the evening, at the time of their going to hear the Puranas and the preaching [the flutanist should play]. In this way, at the conclusion of the Purana and the preaching, the Gandha, Vidas, bits of cocoanut,* should be distributed in the order above mentioned; Thus [people] should go. On the seventh day, the Datara should invite the privileged persons and the servants to feast, called Kelavana, on behalf of the goddess, in the following order : To Mahajanas with two servants [here called Padghamkara]† ; four Vartakas and four servants, altogether eight ; two, Vaisampayanas and Dharmadhikari, and two disciples, being in all four ; the Hira Josi and his disciple one, in all two ; one Kharavala ; the worshippers of the four temples. In this manner the privileged Brahmanas and the privileged persons of other castes should be invited to the Kelavana-feast. The Sonara should ask of the Datara, the image called Bhogamuhurta to be seated

* These are popularly called *Ganesa-puja*, or the worship of Ganesa. How bits of cocoanut came to be so named, I cannot say.

† *Padghamkara*, is a drummer, but as there are not many drummers at this feast, the word, I apprehend, means simply a servant or attendant.

on the car in order to have it cleaned and furnished and the Datara should give him the Gandha and Vida.

The privileged persons of other castes are as follow :—

1 Sonara or goldsmith.
1 The Vajantri, *i. e.* flute-player.
1 Dholakari or drummer.
2 Varika or beadle.*
1 Gavada or salt-manufacturer.
1 Sutara or carpenter.
1 Sali or weaver.
1 Kumbhara or bricklayer.
1 Gurava or idol worshipper of the Sudra class from Asuda.
1. Nhavi or barber.
1 Gurava or Sudra-worshipper of the idol Bahiri.
1 Gonvala. †
1 Teli or oilman.
1 Parita or washerman.
1 Chamhar or worker in leather.

In this way the privileged persons of other castes should be invited. On the 8th day all should assemble, and taking all the materials for a feast from the goddess's store [4 letters lost], all should assemble to have a grand dinner, sending invitations to [the villagers of] Asuda and Karanden ; all should go to dine on this occasion of the goddess's festival. The Sutara ‡ should clean the place with cow-dung or otherwise, and bedeck it with streaks of the ashes of rice-husks, &c. The Datar should worship the Rasai [*i. e.* the whole collection of cooked food], and take away the oblation with music. The Upadhya should accompany, in order to dictate how to perform the worship. On their return, the Upadhya should pour a small quantity of ghee over the cooked rice, serve it out to each individual

* *Varika*, in some parts of the country, means a barber, but here he is a kind of beadle at the great temple of the village.

† *Gonvala*. The word means a cow-herd. But here it stands for a man of that surname. The *Gonvala* family is extinct, but the name is called out when the particular village-honors of that family come in their order.

‡ Not the carpenter, but one of the *Brahmanas* with that cognomen.

in order to purify the rice, and should make the Datara pour out on the ground a small quantity of water, offering the whole as an oblation to the deity. Thereafter the people should dine, and Vidas and money-offerings should be distributed. In the evening, Bala-vartaka should have a great oblation prepared for the goddess. Invitation should be given in the morning to the Upadhya and Dharmadhikari, Vaisampayana, and the Josi [4 letters lost], and after they have been brought, the Mantras [or sacred verses] necessary to the offering of the great oblation should be recited, and the oblation, together with materials for worship being taken in hand, they should repair to the temple of the goddess, blowing the trumpets and beating the tom-toms. After going there the goddess should be worshipped, and the oblation, which will have been placed in a vessel made of Bambu work, should be presented to the goddess. The oblation and worship being completed, oblations should be presented to the image to be placed on the car, then to the goddess called Bhavai. There is a tutelary deity behind the goddess Sri. That should be worshipped, and oblations presented [to him]. Thereafter the Ganapati, and Subhadevi, should be respectively worshipped and presented with oblations. Thereafter Gandha, Vidas, and money-offerings should be distributed to the Brahmanas. Thereafter all persons should pass through a Torana* constructed on the north side of the Subhadevi by the trumpeter. One should go to dine of the oblation at the house of the Datara, and all the others should repair to their homes, and take their meals, after which they should go to the temple of the Sri, and after the hearing of the Purana is completed, the ornaments of the goddess should be taken out of the treasury, and given by the Mahajanavartaka to the Datara, whom they should cause to put them upon the goddess. Thereafter the Bala-vartaka should take the staff of the goddess and stand near the Sri, and the Koparakara-vartaka should light the lamps in the Mandapa †, and should stay the whole night supplying oil and wicks. The Sutara-vartaka should fan the goddess with the brush of peacocks' feathers. The Mahajana-vartaka should make the Varika spread seats [mats, &c.] in the

* *Torana* is an arch prepared with the branches of trees, &c., and supported by plants of the plantain.

† A temporary hall for the people to assemble.

Mandapa, and thereafter should seat the people who may have come from other places, in the spots which have been appointed for them. The inhabitants of the place, and the people of Asuda, should sit in the same place on the south side, with their faces to the north. The Vaisampayana should sit in the seat of the sage, facing the whole assembly. After being seated, preaching should be caused to be held, and rejoicings should be made with singing, music, and dancing.* Any inhabitants of other places, who may have come to the village, but may not be present at the preaching, should be very respectfully invited, and conducted with honor to the assembly, and rejoicings should be made. At night the Sonara who has taken the image to be furnished, should bring it back, and the Gandha, Vidas, bits of cocoa-nut, and money offerings, should be distributed to the whole assembly; and before sun-rise the next morning, the whole place should be cleaned and bedecked, and the goddess should be bathed by the Datara. Those persons who may have gone to the temple and made [about 6 letters lost], should cook their food at the temple, offer oblations to the Sri, and, taking a Brahmana and a Brahmana lady in their company, should take their meals before sun-rise. In the morning all should repair to the temple of the Sri. The Dharapa should bring the image to be placed on the car, and the Datara should worship it, and on the worship being completed, the former should place it on the car. The Bala-vartaka should take the staff in hand and walk before the Ratha or car. The Sutara-vartaka should see that the materials of the Ratha are [in] complete [order] and should take the flag in hand and walk before the Ratha. The tailor should clothe the Ratha. The barber should put a looking-glass therein. In the Mandapa of the Subhadevi, the Datara should spread mats, &c., for the Vatandars to sit upon. Thereupon all the Karabharis should take from the stores the grain and money to be paid for service to those people of other castes who have to serve, and which should be given to them all by the Koparakara-vartaka in the order laid down. The Datara should first of all give the Gandha and Vida, to the Koparakara, next to the Mahajana, next to the Dharmadhikari Upadhya, next to the Josi, next to the Bala-vartaka, next to Dharapa, and afterwards to the Sutara. All should then come near

* Dancing at this festival has long gone out of fashion.

the Ratha. On arrival, the Nena Mahajana should apply wet betel-nuts in front of the Ratha, in perpendicular and horizontal lines, so as to form a Makhara.* To him the Datara should first give the Gandha and Vida when he comes near the Ratha, and he should give betel-nuts to the privileged persons. The Parajape should likewise stick plantains to the Ratha, in perpendicular and horizontal lines. To him the Datara should first give the Gandha and Vida and he should give the plantains, first of all to the Vaisampayana and Dharmadhikari, in the place of the sage, and also to the other privileged persons. Thereafter the Sonara should give a pata or a low seat, made of gold and silver, to the goddess, to sit upon, near the Ratha. Thereafter, the Dharapa should walk along with the Ratha. The Datara should mount the Ratha. The Koparakara-vartaka should mount the Ratha, and light the lamp. All the Brahmanas should lift the Ratha, and carry it into the quadrangle. After going there, the Sutara, and Dharapa, and Ashva (?), and Supra (Sudras ?), and the people of four villages being collected, the Ratha should be carried, all the others accompanying it. First of all it should be taken to the north side, should be stopped before each house; the worship and oblation, which the Brahmana and a lady [having her husband alive] will present [at each house], should be received; at each house the children should be mounted on the Ratha; the Datara should offer incense, and wave the lights now and then to the Devasthanas [or the places of gods] which there are in different parts of the village. It should return from the northern boundary-stone, and should then pass by the road to the south side of Nagalesvara. Whilst it is being carried that way, the Sonara should offer the oblation and worship from his house, and should mount the children on the Ratha when it comes near his place. Thence the Ratha should be carried by the passage to the east, and going from north to south; incense should be offered, and the lights waved to Mahadesvara and all other gods, and it should then be brought into the quadrangle, and thence carried up to the river at the south, being stopped before each house. Being carried to the end, incense should be offered and lights waved to the Devi of Gohagara, and the Ratha

* A gaily dressed up frame bedecked with flowers and gaudy trappings, within which idols or human beings are seated on joyful occasions.

should be carried back and stopped before the temple of Narayana. There all the Sudras, children and all, should fall at the feet of Sri or goddess; the Gonvalya should give water to all the carriers who lift the Ratha on their shoulders. Thence from the place of the Upadhya-Vaisampayana, he [the Upadhya-Vaisampayana] should be taken on the Ratha and carried to the spot of Ganga-Narayana, and there the Upadhya should come down, and offer incense to and wave lights before Ganga-Narayana. Thence the Ratha should be carried to the quadrangle, where the Brahmanas should again take it upon their shoulders, carry it near the temporary hall, and deposit it in its proper place. Thereafter they should go to view the goddess, receive the Gandha and Vidas, and return to their respective homes. In the evening all should go to perform the ceremony of abandonment, and for paying off the different persons for their services. The Varika should be present there, fasting, and hold a weapon in his hand; and first of all [he] should call out the name of the Dharmadhikari Vaisampayana; next he should call out the name of the Upadhya Vaisampayana; thirdly he should call out the name of the Josi; fourthly he should call out the name of [about 4 letters lost]. In this manner, having called out the names of the Upadhyas and Josis of the village, as well as those of other villages, the Datara should give them Gandha, Vidas, and Sèles* in the order laid down. Wages should be paid to the different servants. On the tenth all should assemble, and should cull the youngest cocoa-nuts from the trees in the Inam-garden, and with the water obtained from them, should give a cooling bath to the goddess, perform her worship, and should present an oblation, provided with all the articles, items, and particulars necessary to render it complete. Thereafter Gandha, Vidas, and bits of cocoa-nut should be distributed to all, and the ceremony of the nine nights completed. On the seventh of the second half of Chaitra, the Datara should invite all the inhabitants of each house to repeat the name of the goddess, and turn the beads of the rosary. On the eighth, the Datara should perform a solemn enunciation of the object of the ceremony, and should give to the Vaisampayana

* Séle is the plural of Séla, which is a sort of scarf depending from the shoulders loosely over the body. No such clothes are actually distributed at present, but they might have been so formerly.

Upadhya the office of Acharya, or the officiating priest, who should cause the repeating, &c., to be performed by all, and complete the ceremony. On its conclusion, Gandha, Vidas, and money-presents should be distributed to the Acharya and all the other Brahmanas. All should then go home. On the fourteenth of the second half of the month of Chaitra, the Datar should have the ceremony of Uktàvala, (*i. e.* of sprinkling boiled rice over the streets of the village) performed, and should offer sacrifices to the devils. On the last day of Vaisakha, the Varika should repair to the temple of Sri, and after the Datar has brought out the idol Bhavai Devi, which is in that temple, should clean the place and bedeck it with streaks of the ashes of rice-husks, &c., and should sit there. The women of the village will go to see that goddess, and will perform her worship and present her with oblations and money-offerings, both of which last should be carried away by the Varika. In the evening, the goddess should be kept by the Datara in the sanctum sanctorum, and the Varika should clean the place and bedeck it as before.

On the fourteenth of the second half of the month of Jyeshtha, the Madherun [or the little corpse]* should be carried round. The materials for this should be furnished by the Bala-Vartaka. The Datara should announce the determination of performing the ceremony, and the Upadhya should cause him to pour the water. Formerly, when the devils had taken the life of the Brahmana [Datara], the sage had caused them to bring him back to life, promising them a human sacrifice, which should therefore be dressed in new clothes, and be accompanied throughout the village by the Sudras and the worshippers of the inferior deities, and after being carried round the village it should be brought to the temple of the Sri and the holy water from the temple, as well as the waters from the tanks and wells built by the sage, being brought, should be sprinkled thereon, and incense should be offered and lights waved to the goddess, to whom prayers should be offered by all; the Sri should then cause the man to come to life again.

From the tenth of the first half of Ashadha, the Chaturmasya, or the quadrimester, commences, and from that day and the day

* See preliminary remarks, page 208.

following, the masque of the goddess should be put in a palki, [or palanquin as it is more commonly called], and carried round the whole village, and the worship and oblations, which the people will offer, should be received. In this manner people should go on till the eleventh of the first half of Kartika.*

On the fourteenth of the first half of Sravana, an invitation from the goddess should be issued by the Datara to all for the performance of Sràvani [*i. e.* the ceremony of renewing the sacred thread]. On the fifteenth, the Upakarma [or the taking up the study of the Vedas], should be performed. The Utsarjana [or the ceremony of suspending the study of the Vedas] should be performed in the temple of Mahadesvara. The materials for performing the Upakarma should be kept ready by the Datara in the temple of Sri, and the Datar and all others should make the necessary determination, worship the Ganpati, and throw rice on the Upadhya, who should then begin the ceremony and complete it. The lamps, which may have been brought there for presentation, should be presented—the first to the goddess; and if there be a second, it should be given to the Vaisampayana; if a third, to the Dharmadhikari; if a fourth, to the Josi; if a fifth, to the [about 6 letters lost] Koparkara; and if there be more, they should be given to the different great Brahmanas amongst the inhabitants. The determination for giving the lamps should be caused to be performed by the Upadhya. Thereafter all should go home. The Upadhya should be invited by the Datara to dinner. In the village, whoever has to perform any sacrifices for the deities or to the manes of ancestors, should first of all call upon the privileged persons at their houses, and invite them according to the order laid down. Whenever there is a ceremony in the temple of Sri on account of the village, the determination to perform the same should made by the Datara, and the Vaisampayana should be appointed the conductor of those ceremonies, and the Sadasavarna† should also be given to him. In the village also people should conduct themselves as is herein laid down. The Josi

---

* This practice has ceased.

† *Sadasavarna* is a corrupt form of *Sadasyavarna*, which means the authority of *Sadasya* or head of a *Sadasa*, an assembly.

should be appointed Brahmà.* The duty of Brahmà on the occasion of the ceremony of Sravani, should be conferred upon the Vaisampayana. The Gandha, Vida, and all honor first due to the sage should be given to the Vaisampayana, he being called the son. The duty of Brahmà belongs to the Josi. The offices of Upadhya and Dharmadhikari, these two honors in the village, belong to the Vaisampayana. The third belongs to the Josi. [About eight letters lost.] To whoever, besides the Brahmana, may be entitled to wear the sacred thread, as well as to the Gujars, and Kshatris and Sonaras, there is no other Upadhya except the Vaisampayana, and no other Josi, except the village Josi. In this manner everything should be conducted.

On the fourth of the 1st half of Bhadrapada, whatever people may come in the temple of the Sri to see the Ganapati, the Datara should give them Gandha and Vidas. On the 15th of the same half-month and on the last day of that month, the Datara should invite the people of the village to the Saradi-navaratra, [or the first nine nights of the month of Asvina,] on behalf of the Sri. On the 1st of Asvina-suddha, the Karabharis or managers of the village should cause the Datara to bring, from the Inam-stores of the village, materials for establishing the Ghata†, and the Datara should make the determination and formally enunciate the purpose of the ceremony, and bestow the office of Acharya or officiator upon the Vaisampayana. Thus the Ghata should be established. The offices of the Devi should be recited. And the people should listen to the expounding of the Puranas. On the seventh day, the Datara should issue an invitation for repeating the names of the goddess and turning the rosaries. All the people, the young and the old, should come and perform the repeating the goddess's name, and turning the rosary.

---

* *Brahma.* The first of the Hindu Triad, representing the evolver and constructor of the universe. Here it means the fourth priest officiating at a *Srauta* sacrifice, whose chief duty it is to decide on the propriety or otherwise of the texts recited during the ritual, from the *Rig*, *Yajur* and *Sama Vedas.*

† A vessel for holding water, having a mango-spring, a cocoa-nut, and betel-leaves, and betel-nuts over its mouth, and certain mystic marks made with red-lead or reddened turmeric. Into this, as the temple, the entrance of the goddess is supplicated by mantras.

The formal enunciation of this ceremony should be made by the Datara, and the duty of officiator should be conferred upon the Vaisampayana, who should conclude the ceremony. On the 9th day, materials for performing the Homa, or fire-sacrifice from the Inam-allowance [are to be brought]. After the conclusion of the Homa, an oblation should be given, which the trumpeter and the Varika should take away. Thereafter milk should be poured upon the Sri, in order to give her a cooling bath, and excellent worship should be, afterwards, performed and an oblation presented, and Vidas and money-presents should be given to the Upadhya and other Brahmanas. In return for the Japa* to be performed during the Navaratra, the Upadhyas should cultivate the field called Mala, and enjoy it as an Inam. On the morning of the tenth, all should go to the temple of the Sri and the Upadhya should cause the Datara to perform the ceremony of abandoning the Ghata, and sprinkle the water upon all. In the evening all should go to cross the boundary by going near the temple of Mahadesvara, and worship the Sami-tree (*Mimosa Suma*), or the worship of the Sami-tree should be performed on the village-boundary, near the river. Thereafter all should come, with tom-toms beating and trumpets blowing, to the temple of the Sri, and view the goddess; after which, all should go to their respective homes.

On the 15th of the first-half of the month of Kartika, all should go to light the Tripura†. Gandha and Vidas should be given to all from the Inam allowance.

In the month of Pausha, on each Tuesday, Gandha and Vidas should be given to all, from the Inam allowance.

On the fourteenth of the second half of the month of Magha all should perform [about three letters lost].‡

From the first of the first half of Phalguna, the dancers or sport-makers should pay respects at the temple, and at the houses of the

---

* *Japa*, the repeating the name of god, and turning the rosary.

† *Tripura*. A lamp-pillar erected in front of a temple, on which one or more lights are placed.

‡ The letters lost probably refer to the observance of the fast on this day, which is well known as *Sivaratri*, or the night of *Siva*. On this day, *Siva* is worshipped with mango-blossoms and white flowers, which are reckoned the favourites of that deity.

privileged persons, in the proper order. The houses of the privileged persons should be visited from the south to the north [namely, the first house must be the southernmost, and thence they should visit them in the direction from south to north, the last house in the north being honored last]. On the 15th [of that month] the Sonara should perform the sacrifice [to the Holi] on the east, beyond the tutelary deity at Navanagara [or the new-town]. The Sonara should invite the privileged Brahmanas; the trumpeter should precede all of them in the evening, when they should go by the road leading [to Navanagara] by the passage through the [east-north-east corner of the village] place called Kopari. After going there, the Vaisam-Payana should dictate the form of worship to the Sonara. Thereafter Gandha and Vida should be first of all given to the Vaisampayana-Upadhya; secondly, to the Mahajana; thirdly, to the second Mahajana; fourthly, to the Datara; fifthly to the Josi; sixthly, to the Bala-vartaka; next to the Dharapa; then to the Sutara; and afterwards to the Koparakara-vartaka, and the other inhabitants; and all should return, trumpets blowing and tom-toms beating, by the above-mentioned corner passage to the neighbourhood of Sri Bahirava. On arriving there, the Dalavi should supply the materials of worship to the Vaisampayana who should perform the worship, and all should circumambulate [the pile], and light the Holi,* after which the Gurava and Varika should escort all to their respective homes. On the 1st of the 2nd half of Phalguna [*i.e.* on the day following the Holi], the Sonara should assemble the people of five clans† and castes, and come from north to south at the Holi of the god Bahirava. On arrival, the Bahirava should be consulted,‡

* *Holi* from *Holika*, a *Rakshasi*, or female demon, in whose honor this festival is held. From the 5th of *Phalguna* (February and March) the villagers assemble at certain spots appointed for the purpose, and prepare small piles of wood, grass, &c., which are lighted in honor of the goddess, and after the flames have burst out, all the people circumambulate them. On the 15th, which is considered the great day of the *Holi*, larger piles are generally constructed, and, principally where Sudras are concerned, animal sacrifices are offered.

† It is hard to say which five castes. The word appears to me to be used as an equivalent for 'many.'

‡ The mode in which *Bahirava* and other inferior deities are consulted (for no superior deity is ever consulted in this manner within my knowledge,)

and with his consent all should come into the village near the temple of Sri Narayana. The worshipper of that place will have had a small tank filled with water on purpose, which should be sprinkled on the sport-makers who may have gone to visit the tutelary deity. On return, the people should come playing the Dhuravada [*i.e.* playing with dust] to the temple of Sri, where the Upadhya should recite the Mantra, after which the people should go to view the Sri, and return to their respective homes. On the fifth of the same half, the Sonara should invite all the privileged persons, and the Datara also to scatter water, &c., in small drops. On the evening of that day, the trumpeter and the Varika should bring them all, the former blowing the trumpets and beating the tom-toms, and the latter carrying the light to the temple of Sri, where the Datara should mix turmeric with water and besprinkle the goddess Durga with the mixture. The Subhadevi should be next besprinkled. Thence all should go on besprinkling all the other gods, with the trumpets blowing and tom-toms beating, by the passage through the east-south-east corner to the tutelary deity near the Holi, and thence to the house of the Sonara at Navanagara. The Sonara should spread [mats] for the privileged persons, and request them to sit down. When they are seated, Gandha, Vidas, and Sélas [or clothes] should be given [in regular order beginning with the Datara] to all the other privileged persons. After they are given to the Datara, they should be given to the Upadhya; next to the Josi, next to the Mahajana-vartaka. Thereafter the people should return to the village from the north. The sprinkling of the Simadevi [*i. e.* the boundary goddess] should be performed from the boundary-stone. Thence people should return to the south, besprinkling all the deities as they pass along. On arriving [at the south end] all the water should be poured upon the tutelary deity, and all should return to their respective homes. In this manner all the Vatandars should conduct themselves.

is as follows :—Flowers, rice, betel-nuts, or some such substances are wetted and stuck to the seat of the idol, and the consulter puts the question thus :—"If such and such a thing is to happen, give the right hand one, *i. e.* let the flower, &c., on the right hand fall." He waits a few minutes, and either by accident or atmospheric influences, the flowers either on the right or the left fall down, when the reply of the deity is considered as favorable or otherwise. If both the flowers, &c., fall simultaneously, they are again stuck up.

The different quarters of the village were allotted [to the different people]. The whole village consisted of eight wards or quarters, wherein the privileged persons should remain. In this manner the settlement of the village was made. When the [east-north-east] corner, called Kopari, was received in grant from the Chantararaja, it was [thought advisable that] the authority of the Brahmanas thereof should be extinguished. At that time the Brahmanas of that place stood [before the sage], and asked what were his commands to them. The sage replied that "in your quarter I should have the following privileges :—Dharmadhikari [about three letters lost], the office of Upadhya, the reading of Purana at the temple of Mahadesvara, and the office of Acharya, and Sadasavarna, and the first Gandha." Accordingly those Brahmanas gave to the sage, and the sage gave them to his Manasaputra [the son of his mind, or his disciple] ; and the inhabitants of Asuda gave him likewise the offices of Upadhya and Dharmadhikari in the spot called Champavati, situated to the north of the river, and from the river upto the mountains to the east of Vyaghresvara, and also in the temple of Sri Vyaghresvara, and these he gave to his son or disciple ; and five fields were given to him. In the quarter called Kopari, the Vatandara authority was the Hira Jyotishi or astronomer of the village.

When [the sage] first came to see this spot along with Brahmanas from the village of Asuda, and crossed over to this side of the river, he first named the place Nutanakshetra. Afterwards they came to the sea-shore and began to cut the banian-tree, when the deities and devils staying there, becoming enraged, deprived the Brahmana, [sur] named Datara, of his life, as a kind of sacrifice. The deities were afterwards appeased, and the Brahmana brought to life again ; and a second name was given to the place, *i. e.* Mulavataka-grama. The establishment of Sri was made, the Brahmanas located in different quarters. Many gods and shrines were established for restraining the devils. Certain fields were assigned to the goddess and to himself. The field called Chirekhana-bavila was allotted to defray the expense of his annual ceremony. The field called Vonvalen, was allotted for oblations to the goddess. The field called Kanaka, for flowers, &c., to the goddess ; the spot called Umbara-kshetra, for celebrating the festival of the goddess : the spot Lamaga, for certain

duties connected with the fair of the goddess: the spot called Chandana, for Gandha, Vidas, and money-presents to the Brahmanas invited on the occasion of his [*i. e.* the sage's] annual Sradha [or funeral ceremony]; the field called Ganesa was assigned to [the gods] Ganapati and Nagalesvara. The field called Madaseta was assigned to [pay expenses of] the ceremony called Madherun.* [The sage] asked for, and obtained for himself and the goddess a field beyond the river. Besides, the field [called Kesara] was assigned to the "*abode of nothing.*" The field called Ada, consisting of five sections, whereof one section being field Kesara was assigned to the "abode of nothing," and four were kept for himself and for religious offerings to the Sri or goddess. The proceeds thereof are to be half kept in the treasury [of the goddess], and the other half to be taken for the support of their families by the adopted son of the sage and the Datara. The field Devalen was assigned for the oblation and the [annual] fair of the boundary goddess, and the fields Chandraga and Madisa were assigned to the treasury of the goddess. The southern boundary of his village was defined to be the mountain-like stone Bhimasena, the water on the mountain to the east of that stone flowing to the west, and to the north up to that in the village.

[The sage] himself asked for, and obtained from the king, the place called Karavanda.† The honors of elderliness, and the offices of Upadhya and Dharmadhikari were his [*i. e.* the sage's]; and he established Brahmanas there, providing them with water and quarters and keeping one for himself. There were Sudra Vatandars whom he also established. For the Sudras and other castes he gave place in the spot called Kasedi, and on the east and north of Nagalesvara. Thus he kept other castes, and he built in the neighbourhood of gods, and shrines, wells and little tanks, for Brahmanas to bathe and pray, and for watering cattle. On the south-east of the god Maharudra [otherwise called Mahadesvara], outside the village he appointed a place for the Brahmanas to present the funeral cake to their ancestors. To the north of that he appointed burying-places in different localities for different castes. On the east of Mahadesvara and the north of the river, he assigned a burying ground to the people of the

* See page 226.

† A village to the south-south-east of *Muruda*, and called *Karanden*.

new town. The authorities of the village Phunasuva were to extend [their supervision up to] the Kopari. To the south of the tutelaryf deity, a road leading from east to west was kept. To the south o that, on this side of Kopari to the north, he first named his new village. In this manner making the new village, he established gods and shrines and tutelary deities in different places to restrain the devils; and he assigned particular fields [the proceeds whereof were to be appropriated] for his annual funeral ceremony, and for the treasury of the Sri or goddess. For his annual funeral ceremony, the field called Chirekhana-Bavila was assigned, and the field Pedhika, in the Kopari-quarter, was assigned for oblation to Mahadesvara, but one portion thereof was to be the god's, another portion assigned for his annual funeral ceremony, and one portion was to belong to the Brahmana [about 4 letters lost] living at Kopari. On the north, the field Chandana was assigned for [defraying the expenses of] the fair to the goddess, and for giving Gandha and betel-nuts to all. For himself, he assigned a place on the south on the bank of the Vayu-Ganga, for bathing and prayers, placing stones to sit upon for bathing and a small cistern for water, and constructing a Tataka or small tank for performing Sandhya, *i. e.* prayers. The four boundaries of our village are:—On the south, the waters on the mountain; on the north, the waters on the mountain; on the east, the mountain-slope up to the point where the waters run yonder; and on the west, the ocean. This narrative is written.

SERPENT WORSHIP IN WESTERN INDIA.

THE NAGA-PANCHAMI HOLIDAY AS IT IS NOW OBSERVED.

SERPENT WORSHIP, THE NAGAS AND SARPAS.

Read 13th May 1869.

I PROPOSE this day to describe the festival called the Naga-panchami, as it is celebrated by our people at present; and afterwards I shall submit a few observations, founded on this and other festivals and ceremonies, on what is popularly called Snake or Serpent Worship, and the *Sarpas* and *Nagas* of India.

Nagapanchami is the fifth day of the first or bright half of the lunar month, named Sravana,* which generally corresponds with August and September of the Christian year. Sravana is a month in which the Hindus generally have some *vrata* or ceremony to perform every day, and sometimes more than one festival occurs on one and the same day. The fifth day of the month is considered sacred to the *Nagas* or serpents. On this day, early in the morning, each family brings an earthen representation of a serpent, or paints a family of five, seven, or nine serpents with rubbed sandalwood or turmeric. (The annexed diagram[1] shows the representation of serpents as they are actually worshipped on this occasion.) The vessels used in performing the worship are, as will be seen, placed in front; and I now show to the members specimens of these vessels made out of the horns of the wild buffalo.† Flowers, rubbed sandalwood, turmeric,

* This is the fifth month of the Saka year, and is so named after the asterism Sravana (a Aquilæ), one of the 27 lunar mansions, which occurs in that month.

† These vessels are generally made of brass or copper, and also of silver, and can be easily had in the Bazaar. They are commonly used by all the Hindu worshippers in their daily ceremonials and devotions, as well as on extraordinary occasions.

parched rice and beans, or parched gram, and jowari (*holcus sorghum*) are offered to the serpents thus painted.* Lamps are lighted and waved; incense is offered; and food and fruits are placed before them. On this day, only boiled food is partaken of by the people, and the dishes prepared are generally of a coarser kind than on other holidays. After morning meals, a lamp is generally kept lighted throughout the day by the side of the painting or image, and milk and edibles are also placed close by. In the afternoon, people go to some place, generally an ant-hill, where serpents are said by local tradition to reside. Here, generally, snake-charmers may be seen with live serpents, to which offerings are made by the multitude. Even in Bombay, these men take snakes round to the houses of the people in the native town, and all classes of the inhabitants amuse themselves by giving them different kinds of edibles. In the evening, flowers and incense are again offered, lights waved, and edibles placed before the image or painting as the case might be, and one or more lamps are kept burning. The worshippers sit generally playing all through the night. This watching is called by some, keeping the serpents awake; or rather it is the worshippers keeping up for fear of being bitten by serpents. The worship is generally performed by the female members of the family, and at the conclusion, all the ladies and children gather together, and the eldest or the most intelligent of the former repeats the following *kahani* or story, which professes to embody the popular origin of this worship as it is believed in by the more ignorant of the Hindu community on this side. I give the Marath narrative as it is now repeated in foot-note.†

* The figures, as shown in the diagram, are drawn either on a smal board, or a wooden seat, or on a wall.

† **काहाणी नागांची.**

आइका परमेश्वरा नागानों; मणिपर [माणिकपूर] नगर आहे; तेथें एक गावडा ब्राह्मण होता. त्याला नागपंचमी माहीत नव्हती, व त्या दिवशीं नांगरूं खणूं नये, वेंचूं खुंटूं नये, व भाजूं पोळूं नये, हें त्यास माहीत नव्हतें; ह्मणून तो नेहेमींप्रमाणेंच त्या दिवशीं आपली शेतजमीन नांगरावयास गेला. तों शेतामध्यें एका ठिकाणीं नागिणीचें बीळ होतें, व त्यांत तिचीं पिलीं होतीं तीं नांगर लागून मेलीं; नागिण फिरावयास गेली होती ती आली आणि पाहात्ये तंव सर्व पिलीं मेलीं. तेव्हां ती फार संतापून आणि कोणी पिलीं मारलीं याच्या शोधाकरितां निघाली. फिरत फिरत

The following is a close English version of the story :—

"THE STORY OF THE NAGAS.

"Oh God ! Nagas (serpents) ! hear. There is a city (called) Manikpura [or Manipura]. In it lived a Gavada Brahmana. He was ignorant of the Nagapanchami. And he did not know that on

---

गावडयाचे घराकडे आली, आणि पाहात्ये तंव त्याचे नांगरास रक्त लागलेलें आहे. तें पाहून तिणें निश्चय केला कीं, याणेंच माझीं पिलीं मारिलीं. ह्मणून, गावडा व त्याचीं सर्व कुटुंबांतील मनुष्यें निजलीं होतीं, त्या सर्वांस दंश करून तिणें मारून टाकिलें, आणि त्याच्या सर्व कुलाचा नाश व्हावा ह्मणून त्याची मुलगी दुसरे गांवीं दिलेली होती तेथें तिला दंश करण्यासाठीं गेलीं. परंतु तिणें नाग काढून त्यांची पूजा नैवेद्यसुद्धां करून, रात्रौ धूप, दीप, नैवेद्य इत्यादि सुवासिक पदार्थ त्यांच्यापुढें ठेवले होते. तें नागिणीनें पाहून त्या ठेविलेले पदार्थांचा तिणें उपभोग घेतला, आणि संतुष्ट होऊन त्या मुलीस ह्मणालीः "मुली, तुझे बापानें आज माझीं सर्व पिलीं जमीन नांगरतांना मारून टाकिलीं, ह्मणून मी तुझीं माहेरचीं सर्व मनुष्यें मारून तुला दंश करण्याकरितां आल्ये होत्ये, परंतु तूं एथें माझें स्मरण करून माझी पूजा केलीस याजकरितां मी संतुष्ट झाल्ये ह्मणून तुला दंश करीत नाहीं." तें ऐकून मुलगी ह्मणाली कीं, माझे माहेरच्या सर्व मनुष्यांस मारिलीं आहेस, तीं पुनः संजीवन होण्यासाठीं कांहीं उपाय सांग, तेव्हां ती ह्मणाली "हें आमृत घे आणि त्यांच्या अंगावर शिंप. ह्मणजे तीं संजीवन होतील." इकडे गावडयाचा गांवांतील लोक, गावडा अजून कां उठत नाहीं ह्मणून शोध करून त्याचें दार उघडिलें. तों सर्व मनुष्यें त्यांणीं मेलेलीं पाहिलीं. तों इतक्यांत त्या गावडयाची मुलगी आली, आणि नागिणीनें दिलेलें अमृत त्यांवर शिंपून संजीवन केलें. नंतर मुलीनें बापास सांगितलें कीं, नागपंचमीच्या दिवशीं तूं नांगरीत असतां नागणीचीं पिलीं मेलीं, ह्मणून त्या रागानें तिणें तुह्मांस मारिलें, आणि मला मारण्याकरितां गेली होती, परंतु मी नाग काढून पूजा केली होती, ती पाहून संतुष्ट झाली, आणि तुमची हकीकत तिणेंच मला सांगितली व तिणें दिलेलें अमृत तुमच्यावर शिंपून तुह्मांस संजविन केलें. आतां आजपासून श्रावण मास येईल तेव्हां शुद्ध पंचमीच्या दिवशीं नागाची पूजा यथासांग करावी, आणि रात्रौ धूप, दीप, नैवेद्य, पुढें ठेवावा, व या दिवशीं खणूं नये व हिंसाही कांहीं करूं नये. याप्रमाणें तो त्या दिवसापासून करूं लागला, व गांवांतील सर्व मनुष्यांस नागपंचमी माहित झाली, आणि सर्व नागपंचमीचें व्रत करूं लागलीं. गावडयाचे मुलीस नाग प्रसन्न झाले; तसे आह्मां तुह्मां प्रसन्न होऊत. सांगत्यास; ऐकत्यांस; नागानों ! तुमची काहाणी साठां उत्तरांची पांचां उत्तरीं सांगितली, ती सुफल होऊ !

that day there should be no ploughing, no digging, no picking and plucking, no burning and roasting. Therefore he went to plough the land in his field on that day as usual. Now, there was in one place in the field a hole of a Nagina, (a female serpent), and in it were her young ones, and they died by the striking of the plough. The Nagina (the female serpent) who had gone out, returned, and found that all of her young ones had died. Thereupon she got enraged, and set out to ascertain who it was that had killed them. While travelling she went to the house of the Gavada, and saw that blood had stuck to his plough, on seeing which she decided that it was that (man), who had killed her young ones. She, therefore, bit the Gavda, and all the members of his family who had gone to sleep and killed them. And in order that his whole family might become extinct, she went to bite his daughter who was given [in marriage to a man] in another village. But she (the daughter) had painted the Nagas (serpents), and having worshipped them and given them offerings, had placed before them, at night, frankincense and other fragrant things, lamps, edibles, &c. On seeing this, the Nagina enjoyed the things that had been placed there, and being pleased, said to the girl, 'Oh daughter! thy father killed all my young ones to-day, while ploughing the field; having therefore killed all the persons in thy maternal home, I had come to bite thee, but as thou didst remember me and worship me, I am pleased, (and) therefore, I do not bite thee.'

"On hearing this, the daughter said, 'thou hast killed all the persons in my maternal home; tell me some remedy by which they may come to life again.' Thereupon, she (the Nagina) said: 'Take this nectar and sprinkle it on their bodies, and thereby they will come to life.' Meanwhile the people of the Gavada's village began to inquire why it was that the Gavada had not yet arisen, and, opening his door, found that all the persons in (the house) had died. Just then arrived the daughter of the Gavada, and sprinkling upon them the nectar given by the Nagina (female serpent), restored (them) to life. The daughter then told her father (as follows):—

"'On the Nagapanchami day, while you were ploughing the field the young ones of the Nagina were killed; thereupon, being enraged, she killed all of you and had gone to kill me; but as I had painted the Nagas and worshipped them, she became pleased, and it was she who

gave me a narrative of what had befallen you ; and (I) restored you to life by sprinkling on you the nectar which she had given to me. Now, from this day, when the month of Sravan comes, (you) should worship the Nagas on the fifth day in the Suddha (*i. e.* clear) fortnight according to the process laid down, and should place before (them) at night, frankincense, lamps, (and) edibles ; and should not dig and should not also kill (anything) on that day.' From that day, he (the Gavada) began to act accordingly ; the Nagapanchami became known to all men in the village ; and all began to observe the Nagapanchami *vrata* (ceremony). As the Nagas were pleased with the daughter of the Gavda so may they be pleased with us, (and with) you. Oh, Nagas (serpents), may your story of sixty sentences (abbreviated into, and) told in five, be productive of good fruit to the narrator as well as the hearer thereof."

At the time of repeating the above story, the reciter and her female hearers each take a few grains of rice in their hands, and at the conclusion they are partly exchanged and partly stuck to their foreheads.

The worship is generally conducted according to the directions laid down in a work called *Vrataraja*,* which extracts it from the writings of Hemadri.† These last are not now available, except when quoted in more modern treatises. The dialogue is introduced under the names of Isvara, the third of the Hindu triad, and his spouse Parvati. A king is described in the middle, whom it is not easy to identify from such a broken fragment. The whole passage in the original runs thus :—

"अथ नागपंचमीव्रतम् हेमाद्रौ प्रभासखण्डे.—ईश्वर उवाच ॥ श्रावणे मासि पंचम्यां शुक्लपक्षे तु पार्वति ॥ द्वारस्योभयतो लेख्या गोमयेन विषोल्बणाः ॥ सा तु पुण्यतमा प्रोक्ता देवानामपि दुर्लभा ॥ कुर्यात् द्वादश वर्षाणि पंचम्यांच वरानने ॥ चतुर्थ्यामेकभुक्तं तु तस्यां नक्तं प्रकीर्तितं ॥ भूरिचन्द्रमयं नागमथवा कलधौतजम् ॥ कृत्वा दारुमयं वापि अथवा मृन्मयं प्रिये ॥ हरिद्राचन्दनेनैव पञ्च सर्पास्तु लेखयेत् ॥ पञ्चम्यामर्चये-

* Vrataraja [*i. e.* King of Ceremonies] is a modern compilation by Visvanatha Bhatta of Sangamesvara.

† Author of Chaturvarga-Chintamani and other works.

ङ्कृत्या नागाः पंचफणाः स्मृताः ॥ पूजयेद्विधिवद्वीर लाजपञ्चामृतैः सह ॥ करवीरैः शतपत्रैर्जातीपुष्पैश्च पद्मकैः ॥ तथा गन्धादिधूपैश्च पूजयेन्नाग-पंचकम् ॥ ब्राह्मणान् भोजयेत्पश्चाद्घृतपायसमोदकैः ॥ अनन्तं वासुकिं शेषं पद्मं कम्बलमेवच ॥ तथा कर्कोटकं नागं भुजङ्गाश्वतरं तथा ॥ धृतराष्ट्रं शङ्खपालं कालियं तक्षकं तथा ॥ पिङ्गलञ्च महानागं मासि मासि प्रकीर्तिताः ॥ व्रतस्यान्ते पारणं स्यात्क्षीरैर्ब्राह्मणभोजनं ॥ सुवर्णभारनिष्पन्नं नागं दद्याच्च गां तथा ॥ तथा वस्त्राणि देयानि व्यासायामिततेजसे ॥ एवं सम्पूजयेन्नागान्सदा भक्त्या समन्वितः ॥ विशेषतस्तु पञ्चम्यां पयसा पायसेनच ॥ दिवा रात्रौ नरैस्तत्र भेदिनीखननं नहि ॥ इति प्रभासखण्डे नागपञ्चमीव्रतम् ॥ " *

ENGLISH TRANSLATION OF THE ABOVE :—

" Now the worship of Nagas on the 5th of Sravana Sukla (*i. e.* the fifth day of the first or bright half of Sravana), (is thus described by) Hemadri in the Prabhasa-Khanda.† Isvara said, Oh, Parvati! in the month of Sravana in the Sukla [or white] fortnight, on the fifth day, the fierce with poisons [*i. e.* serpents] should be written [or painted] with cowdung on both sides of the door;

That day is called the most blessed, not obtainable with ease even by the gods;

Oh, beautiful-faced! This worship of Nagas should be performed on the fifth day for twelve years;

On the fourth (day, *i. e.* the day preceding,) one should dine only once; and on that day (*i. e.* the fifth), food should be taken in the night; so it is said.

Oh beloved! the Naga (or serpent) should be made of plenty of silver or of gold, or even of wood or of earth;

Or with turmeric or sandalwood, the five serpents should be painted.

---

* Vrataraja, leaf 71, page 1, lithographed edition, Sak year 1782, A.C. 1860-61.

† Probably a portion of the Skanda Purana.

On the fifth, the Nagas (serpents) should be worshipped with devotion; the Nagas are said to have five mouths;

These five Nagas, oh, warrior! should be worshipped in the proper manner: with fried rice and the five nectars;*

With the flowers of the oleander (*Nerium Odorum*); the hundred-leaved (the lotus); the jessamine; and the water-lily;

Also with sandal wood and incense;

Afterwards Brahmanas should be feasted with ghee (clarified butter), boiled milk mixed with sugar and sugared balls of (wheat and other kinds of) flour;

Ananta, Vasuki, Sesha, Padmanabha, and Kambala also;

And Karkotaka-Naga, Bhujanga, Asvatara;

Also Dhritarashtra, Sankhapala, Kaliya, Takshaka;

Also Pingala, and Mahanaga; these are worshipped month by month.

At the end of the *vrata* (or ceremony) there should be a *párana*, or feast, and dinner to Brahmanas with sugared milk;

To the Vyasa (*i. e.* the reader of the Puranas) of immeasurable glory, a Naga (*i. e.* serpent) of gold, and a cow and clothes should be given.

In this manner, the Nagas should be always worshipped with devotion, especially on the fifth, with milk and sugared milk.

On that (day) there should be no digging of the earth, by day or by night.

Such is the *vrata* (*i. e.* ceremony) of the Nagapanchami in the Prabhasakhanda."

The above description appears from the frame of it to belong to the past-puranika period; and the place which the preceding tradition assigns to the scene of serpent-killing, and the retaliation by the

* Milk, curd, ghee [or clarified butter], honey, and sugar.

mother serpent, may be Manipura (lat. 24°20′ long. 94°1′), a town in Assam, a province where a tribe of mountaineers, named Nagas, is living to this day. Whether Gavada is a corruption of Gaud (a Bengali), or a Canarese Gowda—a Patil and cultivator, is also deserving of inquiry.

The account which I have given above, is that of the festival as it is observed in the Konkana district, particularly to the south of the island of Bombay. The festival is, however, not confined to a particular portion of Western India. It is general. It is celebrated by all classes and sects of the Hindus; by the orthodox as well as by the heterodox; by the followers of the Vedas, as well as by those who reject the religious authority of those works. The ceremonial differs slightly in different places. In some districts the people observe a fast on the 4th day, *i. e.* the day preceding the Naga-panchami. It is clear, however, that the festival obtains greater sanctity above the Ghauts than below, except perhaps in Gujaratha and in the province of Kanada (or Canara). In the Sattara and Kolhapura districts, the private schools are generally closed on this day: the pupils are bathed, dressed in their holiday attire, and taken in a grand procession to some river, or other watering place outside the town or village. In Native States and Principalities, the State and its officers supply richly-caparisoned elephants and horses, detachments of infantry and cavalry, and kettledrums and other instruments of music, on the occasion of these processions. The children wash their slates, or rather wooden boards, apply to them chalk or *Sadhu* (a kind of clay), and draw thereon a Naga or serpent (see C).

Some also draw a picture of *Sarasvati*, the Goddess of learning. Ordinarily, this deity appears as a beautiful female seated on a peacock; but on this occasion, she is represented by a cluster of 5, 7, or 9 serpents rudely drawn (see D).

This drawing is then worshipped with flowers, parched gram, *jowari*, peans, &c. The children return in a procession to the school, give some present in corn, money or clothes, according to their means, to the master; and go to their homes to enjoy the holiday. In the afternoon the women of the inferior classes put on their best clothes

and ornaments, and congregate in parties to sing and dance. They generally form circles, and, keeping their children in the centre, dance around, singing some country songs. In some provinces, the dancing takes place near an ant-hill, or the hollow of an old tree where serpents are believed to live. In some parts of the Dekkan, boys, on this day, throw little fruits, generally the fruit of Chirphala at each other and at young maidens by means of popguns. Other kinds of sports are also had recourse to. Before sunset, the people generally repair to an ant-hill or some such hollow as has been above referred to, to pay homage to the Naga. If there be a temple of the Naga in the village, every one of course goes there to perform worship. All afterwards return to their homes, and worship the images or paintings according to circumstances, in the manner previously described.

Battisa-Siralen, a town in the Sattara Collectorate (lat. 16°57′, long. 74°15′), is famous as a place of serpent-worship at the present day. Snakes of a certain species (called *Nagakuli*), said to be not very poisonous, are here actually caught on the day of the Naga-panchami and kept either in earthern pots or covered *bambu* baskets. They are fed with milk and edibles, and worshipped in other respects, like the images and drawings above-mentioned. The day after the Nagapanchami, they are taken back to the jungles and set free.

I will not at this stage offer any conjecture as to whether this serpent-worship has any relation to other systems of religion; but I would here note a curious tradition in connection with a tree of the species Gorakhachincha, *(Adansonia Digitata)** or the tamarind of Gorakha, which exists at the above town. Tradition ascribes this tree to be the result of a miracle performed by a saint called Gorakhanatha or Gorakshanatha. It is related that Gorakhanatha, when he came to this town, struck his walking stick into the ground on the spot where the tree stands; and that it grew into a stately tree which is now an object of popular worship. The annual festival of this tree is held on the 11th of the dark half of the month of Chaitra.† Worshippers begin to come on the previous day, and leave the place on the third or the 12th of Chaitra. About 50,000 pilgrims are said

* See "A Catalogue of the Plants growing in Bombay and its vicinity.—By John Graham. Bombay: 1839:" page 16.

† Corresponds generally with March and April.

to assemble every year on this occasion. A large bazaar is held for five or six days, and considerable mercantile business is transacted. The priests officiating at the shrine of this tree have large holes bored in their ears, from which depend heavy ear-ornaments. They are hence called Kanaphates, literally persons with torn ears. All classes of people offer worship to this tree, including the followers of the Vedas, as well as others.

To resume the main subject of this paper. Besides the actual worship of living snakes at Battisa-Siralen, there are temples dedicated to the Serpent-god in various parts of the Dekkan. Of these, the one at Bhomaparanden in the territories of His Highness the Nizam is one of the most celebrated.

In the South of India, Canara is a district which may be said to be sacred to serpent-worship. In the Canarese districts generally, the Nagapanchami festival is celebrated, as in the Dekkan, on the 5th of the bright half of Sravana. But in the Telanga and Tamila districts, the ceremony is performed on the fourth of the bright half of either the month of Kartika,* or the month of Vaisakha,* or the month of Magha,* and this day is, therefore, called by the people of those parts "Nagalu-chavati," *i. e.* the Nagachaturthi or the chaturthi of the Nagas. There is not much difference in the mode of performing the worship. The ant-hills or hollows to which the people resort to make their offerings, and which in the Marathi districts are called Varula, are, I am informed, termed in the Canarese, Hutta; in the Telangi, Putta; and in the Tamil, Puttu. In the Canarese districts, stone images of the Naga are kept generally under the shade of the *Peepul* tree (*Ficus Religiosi*). Metal images are also made and after being worshipped, they are presented to the Brahmanas. This ceremony is performed by the females of higher classes. An incarnation of Sesha, one of the nine great Nagas, is worshipped at various places in these districts, under the name of Subrahmanya. There is a town in South Canara, called Subrahmanya,† fifty-five

* Correspond generally with October and November, April and May, and January and February, respectively.

† "A Gazetteer of the Territories under the Government of the East India Company, &c." By Edward Thornton, Esq., London, 1857, page 927.

miles, E. S. of Mangalore, (lat. 12°40', long 75°40'). This is sacred to the Naga or serpent-god. On the 6th day of the bright half of the month of Margasirsha (November and December) occurs its annual festival; and that day is hence called Subrahmanya Shashthi or Subraya Shasthi. Thousands of Brahmanas are feasted on this occasion. Brahmanas, bearing the order of Brahmachari.* are in particular request. Lepers and persons supposed to be under the influence of evil spirits, are brought to this place for cure, which popular belief ascribes to the miraculous power of the deity. People who have no issue, make a vow to this shrine, which consists in fasting on the day of the festival and rolling in the remains of food left on the dishes spread before the Brahmanas at the feast. A person, supposed to be possessed with the spirit of Subrahmanya, dances at the temple and is believed to have the power of telling the past, the present, and the future. On the day of the festival above-mentioned, one of the officiating priests puts a leather bag on one of his hands, and, with the hand thus protected, takes out three handfuls of earth from one of the holes in that locality supposed to be inhabited by serpents. This is called *Mulamrittika* (the original earth), and is distributed to the assembled worshippers, as a mark of the deity's favours.†

---

* *Brahmachari* means a student [in theology]. All twice-born Hindus, *i. e.* the Brahmanas, the Kshatriyas, and the Vaisyas are enjoined to spend the first quarter of their life in this state. For particulars, see Manu, chapter II., verses 175—210. The English reader may consult with advantage, Elphinstone's India, page 13, [Third edition.] and Sir W. Jones' Works, vol. 7, pp. 139—144. [Edition in thirteen volumes: 1807].

† In a work published this year at Madras entitled the "Genealogy of the South-Indian Gods, by Bartholomaeus Ziegenbalg, First Protestant Missionary in India. Freely translated into English, from the German, by the Rev. G. J. Metzger," pp. 63—69, is a description of the deity Subrahmanya and his two wives. No account of serpent-worship is here to be found, although, I am informed, it prevails as a matter of fact at all shrines dedicated to this god. सुब्बर [*Subbara*] and मणी [Mani] would form a combination, signifying the chief or jewel of serpents. Subharaya or Subha-raja means the sovereign serpent. These significations, together with the fact of serpent-worship being now in vogue at these shrines, appear to support the connection of Subrahmanya with serpent-worship. Stories are told of a serpent actually appearing on the occasion of the annual dinners. Although Subrahmanya is described as Kartikeya, or the god of war, his actual connection with serpent-worship can be seen in

A circumstance showing the practical influence of serpent-worship in worldly affairs here deserves a prominent mention. A class of Brahmanas called Haige,* in Canara, have, amongst their ranks, persons who arrogate to themselves the title of Nagapatri,† or the proper habitant of the Naga deity. They are supposed to become possessed of the spirit of the Nagadeva, and, in that state, are thought to be capable of foretelling future events. People invite them to their homes, and have a feast in their honour, called the Nagamandala or an assembly of the Nagas. The least expense for such a feast amounts to from three to five thousand rupees. Formerly, the Nagapatris were in great repute. Disputes were referred to them for settlement, and their word was generally the law. An invitation from one of the Nagapatris to a litigant was almost instantly obeyed. One of the first things a party had to do under the circumstances, was to give a feast to the Nagamandala and spend thousands of rupees. These things began in time to be perceived by the people, and the power and influence of these priests has, I understand, considerably declined.

In the jungle in the neighbourhood of the shrine of Subrahmanya above-mentioned, grows a species of cane, called after the presiding deity, *Nagaveta* or Naga-cane.‡ A walking stick of this cane is reckoned a sufficient protection against the poisons of serpents.

---

all his temples, of which, besides the one alluded to in the text, there are two others in South Canara, one at Vitthala and another at Munjesvara.

In the district of North Canara, in the Taluka of Cumpta, is a place called *Naga Tirtha*. There is a small well-built tank, around which are small artificial caves containing thousands of serpent images.

At Nagapattana in the district of Tanjore, there is a celebrated temple of Naganatha. Inside the temple near the idol of Naganatha, there is a white-ant hill to which large offerings are made in honour of the serpent-god.

* See "The Physical History of Mankind:" by J. C. Prichard, M.D. Vol. IV., p. 162.

† Dr. Buchanan, in his work entitled "Journey from Madras through Mysore, Canara, and Malabar," mentions a sect named *Nagaratras*, who appear to belong to the Vaishnava and Saiva creeds, some following the tenets of the Lingayatas: see Vol. I., pp. 321, 322; 351, 352.

‡ *Calamis rudentum*: see "Graham's Catalogue of Plants," p. 225.

The above account has had reference to the Maratha and Canarese districts. In the province of Gujaratha also, the Nagapanchami festival is observed by all classes of Hindus, high and low. The serpents are drawn with black ink, either on the walls or doors of houses. The process of worship is similar to what obtains in the other provinces, except that cowdung is first offered here before incense, flowers, &c., and at the conclusion green grass and butter are offered with the following prayer:—"Please to receive these offerings and seek your abode in the fresh and green forests."

Cups full of milk are placed in different corners of the house as offerings to living serpents, and a sight of one on this day is considered a very auspicious occurrence.

The influence of the Jains being predominant in this province, all living creatures receive greater consideration than elsewhere. The serpent gets his share along with the rest, his poisonous qualities making no difference against him in this respect. Ordinarily, a Gujarathi Hindu will not hurt a serpent, even of the most venomous class. He will employ people to catch him alive, put him into a pot, and see him safely conveyed into some jungle. I append below the substance of one of the serpent tales prevalent in Gujaratha, as illustrative of the popular ideas regarding serpent-worship in that country. My friend who favoured me with the story says that it is one out of a large number repeated by the women of Gujaratha on the Nagapanchami day:—

"Once upon a time there lived a Brahmana, who, though possessed of much learning, was so poor as hardly to be able to maintain himself and his family. He had a wife who was much devoted to him. Finding no means of livelihood at the place where they resided, she urged upon him the propriety of his going out to some distant place to seek the means of subsistence. He consented to the plan and set out. The wife having no other provisions to furnish for his journey, filled a vessel with water sweetened with sugar and gave it to him. The Brahmana proceeded about four or five *kosa* (about eight or ten miles), and reached a forest, where under the shade of a tall, umbrageous Banyan-tree, he stopped for rest and slept soundly. It was the height of the summer season, when the heat around was

unbearable. While the Brahmana was fast asleep, there issued forth from the hollow of the tree, the *Takshaka Naga*, who drank the sweet water from the vessel lying by the Brahmana's side, and after emptying it of its contents, entered it and rested there. Meanwhile the Brahmana awoke, and on looking into the vessel found it to contain a serpent. He closed the mouth of the vessel by means of a piece of cloth and thought of returning home with the vessel in hand. 'I shall make a present of this,' says he, 'to my wife, who is always troubling me with entreaties to go abroad to earn money. This will soon put an end to our existence, and will relieve us of the troubles and vexations of this life.' On his return home, his children thinking he had brought some sweatmeats in the vessel, naturally inquired what it contained. The 'contents of the vessel,' said he, 'will be distributed by your mother.' So saying, he went out. His wife, who had gone on some household business, having returned home, the children told her the news of their father's return and showed her the vessel brought by him. On opening the vessel, the mother found it to contain a necklace of diamonds, at which she felt exceedingly delighted. She set about to prepare a good dinner for her husband; borrowed grain from a neighbour, and prepared the food. She sent for her husband who had gone out. The husband returned with great hesitation and reluctance. He was surprised to find the contents of the vessel transformed into precious stones. They all dined together. In the evening the wife went to effect the sale of the necklace. She offered it to the chief banker of her city, who paid her a very handsome sum of money. The banker put the necklace into his box. Soon after, it so happened that the Rajah of the place, who had a wedding ceremony at his palace, wanted a diamond to complete a necklace. The banker (or the *Nagara Seta*, as he was called) offered to supply the Rajah's demand. He went home to take out the necklace with a view to show it to the Raja. On opening the box, however, he found to his extreme surprise, instead of a necklace, the face of a living male child with his thumb in his mouth. The banker, who was childless, was exceedingly glad to find his wishes gratified. The King, who heard the story with astonishment, was, however, glad to see the *Nagara Seta* blessed with a son. The child soon grew older. At sixteen, he was married, and his wife came to live with him. She had maiden companions in the persons

of the daughters of the Takshaka-Naga. On one occasion, they asked her to inquire of her husband to what race he belonged. Accordingly, when they met together, the wife asked her husband to tell her to what race he belonged. 'I will not speak with you until you answer my query,' said she to her husband. The banker's son, keeping this in mind, resolved to go on a pilgrimage to Benares. He obtained leave from his father and set out. Proceeding on their journey, they came by a large forest containing a fine well. Here, he told his wife that he would answer her question. So saying, he descended into the well by means of a flight of steps, and reached the water. Here he transformed himself into a serpent, showing his hood, &c., and disappeared. The wife, who was now left alone in the desert, began to bewail her fate. Her loud lamentations drew towards her, after several days, a shepherd, who used to graze his flocks in the neighbourhood. The shepherd came to her and asked her why she was crying, and how she was left alone. She gave him all the particulars. The shepherd, in return, advised her to observe the *Vrata of the Nagapanchami*, and to fill, in the month of *Bysakha* (or Vaisakha),* four *Kundas*, or pools, with milk, sandal-wood, flowers, and unguents. Having done this, she should go up a tree and sit there. If she did this, the deity presiding over the serpents will arrive there, and will drink the milk from the milk-pool. He will then roll himself into the next pool, containing *Chandana* (rubbed sandal-wood), proceed to the next, and rub his body with flowers, and partake of the unguents in the fourth pool. At last, he will bless the person who had prepared all this. At this stage, said the shepherd, 'you should alight from the tree and ask a blessing.' Accordingly, she acted up to the advice of the shepherd. When asking for a blessing, she said, 'your son has left me a widow. Deign, therefore, to relieve me of this state of misery by calling him back from the place to which he has gone.' The lord of the serpents was pleased to grant her prayer. He called her husband back from the *Pátála* or the lower regions of the earth, and asked him to live with her, as her husband. They afterwards lived happily together and thus concludes the legend, by inculcating the propitiation of the Naga Devata, or the serpent deity."

* Corresponds generally with April and May.

Having thus briefly described the Nagapanchami, I now submit a few observations on the Nagas and the Sarpas, and serpent-worship generally. I must here state that there are other festivals, such as the Anantachaturdasi, connected with serpent-worship; but they are neither so general nor so popular as this. There are likewise serpent-sacrifices which will have to be carefully investigated and described. These, however, will require one or more papers to themselves, and cannot be dismissed summarily on this occasion. It is difficult to distinguish at this day between the *Nagas* and the *Sarpas*. The two words, in their religious acceptation, are now practically treated as equivalent. Sarpa is the more comprehensive term, and means any thing that moves.* Nagas are treated as a species of superior Sarpas, and Naga now specially means the most venomous serpent—the *Cobra de Capello*.

Amarasinha, the most approved Sanskrit lexicographer of the post Vedic period, in describing the *Pâtâla* or the nether regions, says that they are the *Naga loka*, or the country of the Nagas. Afterwards the common names of the class *Nagas*, and *Kadraveyas*† are next given by Amarasinha, who mentions the chief of the Nagas—Sesha or Ananta; immediately after him, comes Vasuki, who is named *Sarparaja* or "the King of Serpents." In the whole of that section, there is no further mention of Nagas; but the different

---

* Muir's Sanskrit Texts, Part II., pp. 234, 255, 256, and 258:—

Sanskrit.	*Greek.*	*Latin.*	*English.*
Sarpa.	Herpeton.	Serpens.	Serpent, reptile.

The declension of the verb *sarptum*, to creep, with the Latin and Greek equivalents, is also given by Dr. Muir.

† So named after their mother Kadru, one of the wives of the sage Kasyapa. See the Mahabharata, Adiparva Adhyaya XVI. [Edition printed at Ganpat Krishnaji's Press, Bombay: Sak year 1784, A. C. 1862-63, leaf 44, page 2, and leaf 45, p. 1.] The story of the *Nagas* is continued up to the end of Chapter XXXIX. at page one, leaf 61. How the *Nagas* were cursed by their mother, how one of them—the Takshaka—bit the King Parikshita, how his (Pariksbita's) son Janamejaya persecuted them, and burnt all the Nagas and Sarpas at a huge sacrifice called Sarpasatra, and how they were finally saved by Astika, a nephew of Vasuki; all this is related in detail in the same Parva from Chapter XL.

species of Sarpas are given in detail.* In the Mahabharata, in the section named Adiparva, to which an allusion has been already made (see note † on the last page), the Nagas and Sarpas are promiscuously mentioned. The sea is described as their abode and the names of all the principal *Nagas* and *Sarpas*, which are now in use amongst the Hindus, are detailed without any distinction as to their origin or species.

In the third *Kanda* of the Amarakosa, Varga III, Sloka 22, the word Naga is applied to an elephant and by one of the commentators also to *Matanga*, a race of mountaineers.† [In ordinary language, a Matanga signifies a Manga.] This rendering is further confirmed by another lexicon, the Medinikosa‡, which is distinct on the point. Whether this signification has any bearing on the question now under consideration, remains to be seen. As I have previously observed, in religious practice the Hindus make no distinction between the *Nagas* and the *Sarpas* at present. The actual observance of the Nagapanchami festival shows no difference between the two classes mentioned by the lexicographer.

It is customary amongst the Hindus on this side to sing some sacred songs in the morning, called *Bhupalis*, and offer some prayers in the evening called *Stotras*. These are in addition to the *Sandhya*

---

* Amarakosa, Kanda I., Varga 8 ; see Slokas 1 and 4 for the Nagas and the Sarpa-raja or serpent-king.

The following is an enumeration of the different species of Sarpas in the same *Varga* :—

" सर्पःपृदाकुर्भुजगोभुजंगोहिर्भुजंगमः ॥ ६ ॥ आशीविषो विषधरश्चक्री व्यालः सरीसृपः ॥ कुंडली गूढपाच्चक्षुः श्रवाः काकोदरः फणी ॥ ७ ॥ दर्वीकरो दीर्घपृष्ठो दंदशूको बिलेशयः ॥ उरगः पन्नगो भोगी जिह्मगः पवनाशनः ॥ ८ ॥ "

See also Colebrooke's Amarkosa, 1st Edition, pp. 50, 51.

† Vide Colebrocke's Amarkosa, p. 295.

‡ मेदिनी कोशे, गान्तवर्गे;—"नागः पन्नग मातङ्ग क्रूराचारिषु तोयदे।"

Translation :—Naga (means) 1, *Pannaga*, serpent ; 2, *Matanga*, a race of mountaineers; 3, *Kruruchari*, a wicked person ; and 4, *Toyada*, a water-giving cloud.

and other Vedic observances, and are mostly of Puranika origin. Amongst the latter is a prayer to the *Nagas*, which is as follows :—

नागस्तोत्रं.

अनंतं वासुकिं शेषं पद्मनाभं च कंबलं ॥ शंखपालं धृतराष्ट्रं तक्षकं कालियं तथा ॥ इत्येवं नवनामानि नागानां च महात्मनां । सायंकाले पठेन्नित्यं प्रातःकाले विशेषतः ॥ तस्य विषभयं नास्ति सर्वत्र विजयी भवेत् । इति श्रीपातालखंडे नवनागस्तोत्रं संपूर्णम् ॥

Translation.—" Ananta ; Vasuki ; Sesha ; Padmanabha ; and Kambala ; Sankhapala ; Dhritarashtra ; Takshaka ; and Kaliya ; these, the nine names of the great Nagas, whosoever daily repeats in the evening, (or) especially in the morning, to him there is no fear from poison. Such is the end of the prayer to the nine Nagas in the Patalakhanda. "

This is repeated every day in the evening before meals. And there is a mixture of the Nagas and Sarpas herein. After meals, and before going to bed, the name of an ancient sage, *Astika*, is repeated three times, as a protective against fear from serpents whom the sage, Astika, saved from destruction at the hands of *Janamejaya* at the beginning of the present (or *Kali*) age. * A *Mantra* (or sacred verse) founded

---

* The following passage from the Mahabharata, Adiparva, Adhyaya 53, Slokas 19—29, explains the origin of this practice :—

एतच्छ्रुत्वा प्रीयमाणाः समेता ये तत्रासन्पन्नगा वीतमोहाः ॥ आस्तीके वै प्रीतिमंतो बभूवुरूचुश्चैनं वरमिष्टं वृणीष्व ॥ १९ ॥ भूयोभूयः सर्वशस्ते ब्रुवंस्तं किं ते प्रियं करवामाद्य विद्वन् ॥ प्रीता वयं मोक्षिताश्चैव सर्वे कामं किं ते करवामाद्य वत्स ॥ २० ॥ आस्तीक उवाच ॥ सायं प्रातर्ये प्रसन्नात्मरूपा लोके विप्रा मानवा ये परेऽपि ॥ धर्माख्यानं ये पठेयुर्ममेदं तेषां युष्मन्नैव किंचिद्भयं स्यात् ॥ २१ ॥ तैश्चाप्युक्तो भागिनेयः प्रसन्नैरेतत्सत्यं काममेवं वरं ते ॥ प्रीत्या युक्ताः कामितं सर्वशस्ते कर्त्तारः स्म प्रवणा भागिनेय ॥ २२ ॥ असितं चार्तिमंतं च सुनीथं चापि यः स्मरेत् ॥ दिवा वा यदि वा रात्रौ नास्य सर्पभयं भवेत् ॥ २३ ॥ यो जरत्कारुणा जातो जरत्कारौ महायशाः ॥ आस्तीकः सर्पसत्रे वः पन्नगान्योभ्यरक्षत ॥ तं स्मरंतं महाभागा न मां हिंसितुमर्हथ ॥ २४ ॥ सर्पापसर्प भद्रं ते गच्छ सर्प महाविष ॥ जनमेजयस्य यज्ञांते आस्तीकवचनं स्मर ॥ २५ ॥ आस्तीकस्य वचः श्रुत्वा यः सर्पो न निवर्त्तते ॥

upon this story is said to be used for charming away serpent poison. But this alleged *Mantra* is nowwhere found in a work of repute, to my knowledge. The story of *Astika* is suggestive of curious reflections. *Astika* signifies a believer in the existence and providence of God, and his intercession to save serpents who had forfeited their lives and

---

शतधा भिद्यते मूर्ध्नि शिंशवृक्षफलं यथा ॥ २६ ॥ सौतिरुवाच ॥ सएवमुक्तस्तु तदा द्विजेंद्र समागतैस्तैर्भुजगेंद्रमुख्यैः ॥ संप्राप्य प्रीतिं विपुलां महात्मा ततो मनोगमनायाथ दध्रे ॥ २७ ॥ मोक्षयित्वा तु भुजगान्सर्पसत्रात् द्विजोत्तमः ॥ जगाम काले धर्मात्मा दिक्षांतं पुत्रपौत्रवान् ॥२८॥ इत्याख्यानं मयास्तोकं यथावत्तव कीर्तितं ॥ यत्कीर्तयित्वा सर्पेभ्यो न भयं विद्यते क्वचित् ॥ २९ ॥

Translation:—On hearing this [*i. e.* the foregoing narrative] all the serpents who had there assembled becoming disenchanted [*i. e.* enlightened], were much gratified. [They became] pleased with Astika, [and] desired him to ask of them any boon he wished for (19). Again and again they said, O, thou learned, what can we do that will be agreeable to thee? All of us being saved [by you], are delighted. Oh son, what endearing thing can we give you to-day? (20). *Astika* said: There should be no fear from you to the *Vipras* [*i. e. Brahmanas, Kshatriyas* and *Vaisyas*] or any other persons in this world who are happy in the contemplation of their own inner selves, and who will recite in the evening and in the morning this my sacred narrative (21). The delighted serpents spoke [in return] to their nephew [*bhagineya, i. e.* the son of one's sister], thus: Oh thou, our nephew, we will with humility and with pleasure become by all means the performers of whatever you may wish for (22). He shall have no fear from serpents who shall either by day or by night remember *Asitam, Artimantam,* and *Sunitham.* [These are the names of three celebrated Nagas] (23). You great serpents! it would ill become you to kill me who am remembering him, that most famous *Astika,* who was born to *Jaratkaru* by his wife [also named] *Jaratkaru,* and who saved you, all the serpents, at the serpent-sacrifice (24). Oh thou most venomous of the serpents, blessings be to thee; go back and remember the words of Astika [uttered] at the close of the sacrifice by *Janamejaya* (25). That serpent, who, after hearing the saying of *Astika* does not return, shall have his head shattered into a hundred parts like the fruit of *Shinvsha* [sisu tree (?)] (26). *Sauti* said: When the greatest among the chiefs of the assembled serpents spoke [as above] to the great *Brahmana,* he the magnanimous [Astika], was highly gratified and wished to go away [to his home] (27). Having thus saved the serpents from the serpent-sacrifice, the excellent and religious *Brahmana,* after begetting a family of sons and grandsons, went to heaven at the proper time (28).

brought about their fall through their own deceitful conduct, is a very remarkable event.*

The *serpent*, either as a Sarpa or a Naga thus enters intimately into the economy of a Hindu's daily life. He is treated as a *Dvija*† or a twice-born, and sometimes gets the honours of a funeral, just like a human being. It is well-known, how anxious a Hindu is to have a male heir to perform his funeral obsequies and inherit his name and fortune. To beget a son is reckoned a religious duty, and a Brahmana is enjoined to discharge it, and thus free himself from the debt he owes to his progenitors‡. When the natural means fail or threaten

---

* The Mahabharata tells us that *Takshaka*, one of the chief serpents, bit King Parikshit, the grandson of Arjuna, the celebrated Pandava warrior who figures in the great war. Janamejaya, the son of Parikshit, afterwards came to learn of the treacherous conduct of Takshaka towards his father, and on the advice of a Brahmana sage determined to perform a great serpent-sacrifice named Sarpasatra. Thousands of *sarpas* (including *Nagas*) were thus destroyed; and the whole race of serpents would, it is said, have been annihilated, if the sage Astika had not interfered. Astika was the son of the sage Jaratkaru, by his wife Jaratkaru, a sister of the serpent Vasuki. He was solicited by his relatives to present himself before King Janamejaya, and prevail upon him to stop the serpent-sacrifice. Astika did so; and the king was pleased to grant his request.

It is related that the death of Parikshit by the bite of a serpent had been fore-told; and in order to secure his deliverance from the troubles of this world, and to obtain final beatitude in the next, that king heard from the mouth of the sage *Suka*, the Bhavagata-Purana, which is consequently read by the Hindus to this day.

† Why a *serpent* should be treated as a twice-born man, and should receive the honours of a funeral, it is hard to say. But it is to be observed that the Sanskrit word *dvija*, which means twice-born, is applicable to the three "regenerated classes" of Hindus (*i. e.* the Brahmanas, the Kshatriyas and the Vaisyas), as well as to the teeth, and all oviparous animals:—

"दन्तविप्राण्डजा द्विजाः"

It is curious how mere words will often help to create or to support such observances.

‡ *Taittiriya* or the Black *Yajurveda*, Ashtaka VI.; Prapathaka III., Anuvaka 10:—

"जायमानो वै ब्राह्मणस्त्रिभिर्ऋणवा जायते ब्रह्मचर्येणर्षिभ्यः यज्ञेन देवेभ्यः प्रजया पितृभ्यः । एष वा अनृणो यः पुत्री ।"

to fail, the supernatural powers are invoked. A solemn sacrifice, named Narayana-Nagabali [or the sacrifice to the Narayana-Naga] is performed in order to secure progeny. People generally repair to some *tirtha* or sacred place, and the serpent-sacrifice is there made to propitiate the deities. It will occupy a paper by itself to describe the whole of this rite. The fact, however, that it is performed is sufficient for my present purpose, as showing the ramifications of serpent-worship in this country. This rite is performed in honour of the *sarpadevatas*, not the snakes we see, but to some spiritual beings of a higher order in whose existence the Hindus are taught to believe. It seems that this sacrifice is sanctioned by Vedic ritual, and this leads me to a short examination of serpent-worship, and the *Sarpas* and *Nagas*, as mentioned in the Vedas. As far as my inquiries have yet extended, the earth is addressed as the Sarpa-rajni (*i.e.* the queen of the serpents or the queen of all that moves). The prayer occurs in the 8th Ashtaka of the Rig-veda, and has more relation with the sun than with the serpents.*

Translation :—"A Brahmana, immediately on being born, is produced a debtor in three obligations: to the holy saints, for the practice of religious duties; to the gods, for the performance of sacrifice; to his fore-fathers, for off-spring. Or, he is absolved from debt, who has a son." Also, see the Aitareya Brahmana, Book VII., Chapter III., 11; pp. 460—462 of Dr. Haug's Translation.

* Rig-veda Sanhita, 8th Ashtaka, 8th Adhyaya, Hymn 38: [Metre Gayatri; the Rishi of this hymn is Sarpa-rajni, and the same or the sun is its deity].

"अयंगौः पृश्निरक्रमीदसदन्मातरं पुरः ॥ पितरं च प्रयन्त्स्वः ॥ अंतश्चरति रोचनास्य प्राणादपानती ॥ व्यख्यन्महिषोदेवं ॥ त्रिंशद्धामविराजति वाक्पतंगाय धीयते ॥ प्रतिवस्तोरहद्युभिः ॥

Translation :—[This] shining, perpetual traveller arrived [at the rising mountain; afterwards reaches the mother earth; and occupies the firmament in his passage to the heavens.

His [sun's] light (going from the rising to the setting mountain) moves between [the earth and the firmament]. The great [sun endowed with this light] looks at the heavens.

The thirty component parts of the day [called *Muhurtas*] are made

The Aitareya Brahmana which follows, explains and amplifies upon the Rig-veda, of which it is a complement, thus speaks with reference to this Sarpa-mantra :—

ते ततः सर्पति ते सदः संप्रपद्यंते यथायथमन्य ऋत्विजो व्युत्सर्पंति संसर्पत्युद्गातारस्ते सर्पराज्ञ्या ऋक्षु स्तुवतः इयं वै सर्पराज्ञीयं हि सर्पतो राज्ञीयं वा अलोमिकेवाग्र आसीत्सैतं मंत्रमपश्यद् आयंगौःपृश्निरक्रमीदिति तामयं पृश्निर्वर्ण आविशं नानारूपो यं यं काममकामयत यदिदं किं चौषधयो वनस्पतयः सर्वाणि रूपाणि पृश्निरेनं वर्ण आविशति नानारूपो ऽ यं यं कामं कामयते य एवं वेद. "*

Translation.—(The chanting and repeating of the serpent Mantra.) " All the other priests except the Udgatris go from thence (the Agnidhriya fire) and proceed to the *sadas* (a place in the south-east of the Uttaravedi), all walking each in his own way, in this or that direction. But the Udgatris walk together. They chant the verses (seen) by the Queen of the Serpents (*Sarpa-rajni*); because the earth (*iyam*) is the Queen of the Serpents, for she is queen of all that moves (*sarpat*). She was in the beginning without hair, as it were (without trees, bushes, &c.). She then saw this mantra, which commences, *Ayam gâuh prisniràkramit* (10, 189.) In consequence of it, she obtained a motley appearance, she became variegated, being able to produce any form she might like, such as herbs, trees, and all other forms. Therefore, the man who has such a knowledge obtains the faculty of assuming any form he might choose."†

The Taittiriya, or the Black Yajur-Veda contains more of prayers to Serpents and Serpent-worship than the Rig-veda. In the Sanhita of this Veda are prayers to the *Sarpas*, who are addressed, as in-

---

more beauteous by the rays of the sun. [Therefore] to that sun [prayers] are uttered.

This translation is founded upon the Commentary of *Bhaskaracharya*, n the prayer entitled *Saura-samànarthaka stava*.

* Panchika V., Khanda 23.

† Translation by Dr. Martin Haug, pp. 358, 359.

habiting the heavens; the skies; the rays of the sun; the waters; the vegetables, &c.*

In the Brahmanas of this portion of the Yajur-veda, the same *Sarpas* are again invoked, and sweet sacrifices are offered for their acceptance.† Further on, a battle between the gods and the giants is alluded to. On this occasion, the *devas* or gods present the *Sarpas* and the *Sarpadevatas* with curds and barley flour, and seek their help to subjugate their cousins, the giants.‡

---

* See Ashtaka IV., Adhyaya II, Anuvaka 8:—

नमो॑ अस्तु स॒र्पेभ्यो॒ ये के च॑ पृ॒थि॒वीमनु॑ ॥ ये अं॒तरि॑क्षे॒ ये दि॒वि तेभ्यः॑ स॒र्पेभ्यो॒ नमः॑ ॥ ये॑ दो रो॑च॒ने दि॒वो ये वा॒ सूर्य॑स्य र॒श्मिषु॑ ॥ येषा॑म॒प्सु सदः॑ कृ॒तं तेभ्यः॑ स॒र्पेभ्यो॒ नमः॑ ॥ या इष॑वो यातु॒धाना॑नां॒ ये वा॒ वन॒स्पती॒ꣳ रनु॑ ॥ ये वा॑ व॒टेषु॒ शेर॑ते॒ तेभ्यः॑ स॒र्पेभ्यो॒ नमः॑ ॥ MS.

Translation:—Salutation be to the *Sarpas* [Serpents]; those who follow [or inhabit] the earth; who [inhabit] the firmament; who [inhabit] the heavens; to those serpents, be salutation [given].

To those in the regions of Svarga; or to those in the rays of the sun; [to those] who have made the water their abode; to those serpents salutation be.

[To those] who are the arrows of the *Yatudhanas* [a species of Rakshasas or celestial demons]; who inhabit the trees; or who sleep in hollows; salutation be to them.

† See Bibliotheca Indica [Calcutta,] the Taittiriya Brahmana of the Black Yajur-veda: Vol. III, pp. 2, 3, 299:—

इ॒द ꣳ स॒र्पेभ्यो॑ ह॒विर॑स्तु जुष्टं॑ ॥ आ॒श्रे॒षा येषा॑मनु॒यंति॒ चेतः॑ ॥ ये अं॒तरि॑क्षं पृथि॒वीं क्षि॒यंति॑ ॥ ते नः॑ स॒र्पासो॒ हव॒भाग॑मिष्ठाः ॥ ये रो॑च॒नेसूर्य॒स्यापि॑स॒र्पाः ॥ ये दिवं॑ दे॒वीमनु॑सं॒चरं॑ति ॥ येषा॑माश्रे॒षा अ॑नु॒यंति॒ कामं॑ ॥ तेभ्यः॑ स॒र्पेभ्यो॒ मधु॑मज्जुहोमि॥

Translation:—May this sacrificial offering be liked by the Sarpas The goddesses [presiding over the lunar mansion] Aslesha conduct them selves in accordance with the wishes of those *Sarpas*. May those sarpas [*i. e.* serpent-mouthed gods] who live on the earth and in the firmament, be coming [frequently] at our sacrifice. Those who live in the sun's spheres; who dwell in the bright heavens; those whose will is followed by the goddesses presiding over the lunar mansion Aslesha; to these *sarpas*, I offer sweet sacrificial food.

‡ See Bibliotheca Indica [Calcutta], the Taittiriya Brahmana of the Black Yajur-veda: Vol. III., pp. 12, and 327:—

दे॒वासु॒राः संय॑ता आसन् ॥ ते दे॒वाः स॒र्पेभ्य॑ आश्रे॒षाभ्य॒ आज्येक॑र॒भं निर॑-

After the Vedas, come the *Sutras* (or Aphorisms), and the *Grihya-Sutra* of Asvalayana, which is now followed as a work of authority, enjoins sacrifices and offerings to *Sarpa-devas* or serpent gods. *Sarpabali* or serpent sacrifice is distinctly laid down, and the ritual described in detail.* It is to be observed that Asvalayana mentions the Nagas also. It is well-known that all the twice-born Hindus (*i.e.* the Brahmanas, the Kshatriyas and the Vaisyas) perform every morning the Brahmayajnya. This means, properly speaking, propitiating the Almighty by reciting the Vedas and contemplating them. At present, however, the Brahmayajnya is a ceremony which consists of repeating the initial sentences of all the Vedas and *Vedangas* with a few sacred verses in the beginning and at the end: after this is done, water is offered to the gods, the rishis (*i.e.* the sages) and others. The enumeration of the gods begins with the heavenly spirits, the Brahma, the Vedas, the *devas*, and the spirits of other orders of spiritual existences. Amongst others, we find the *Nagas*† who are followed by "the birds, the cows," &c. Sarpas do not appear on this occasion, though they are mentioned in other places in the same work. It seems to me, therefore, that Asvalayana treats the two, as similar, if not the same spiritual essences.

वपन् ॥ तानेनाभिरेवदेवताभिरुपानयन् ॥ एताभिर्हवै देवताभिर्द्विषंतं भ्रातृव्यमुपनयति ॥ य एतेनहविषा यजते ॥ य उचैनदेवं वेद ॥ सोऽन्नमुजुहोति ॥ सर्पेभ्यः स्वाहा श्रेषाभ्यः स्वाहा ॥ ददशूकेभ्यः स्वाहेति ॥

Translation:—The gods and giants become ready for battle. The gods offered to the *Sarpas* [serpents] and the constellation of Ashlesha barley flour mixed with curds and [steeped] in clarified butter, and by their means, they [*i. e.* the gods] brought their enemies [under subjection].

Therefore by means of these deities, the sacrificer subjugates his inimical kinsmen. He who sacrifices with this sacrificial offering, [and] he who knows this deity; he sacrifices in this world [with the following verses]:—May this be given to the *Sarpas*; may this be given to the constellation Aslesha; may this be given to the *dandasukas* [*i. e.* very venomous species of serpents].

* See the commentary on the Grihya-Sutra by Ganesa, particularly the remarks following the text "सर्पदेवजनेभ्यः स्वाहा" MS.

† "नागास्तृप्यंतु" *i. e.* may the *Nagas* become pleased: See Asvalayana's Grihya-Sutra, Chapter III., MS.

After the Vedas,* comes Manu. In his account of the creation, he mentions both the Nagas and the *Sarpas*, which Sir W. Jones translates into "huge serpents and snakes of smaller size."†

The Mahabharata, which is at least equal to Manu in authority, appears to make no material distinction between the two classes. In the *Bhagavatgita* (one of the episodes in the Mahabharata) where the divine essence in the different classes of beings in the Universe is described, Krishna tells Arjuna that Vasuki and Ananta represent him amongst the Sarpas and the Nagas respectively‡. No further light is thrown on the subject elsewhere in this poem; and the Nagas and Sarpas are henceforth apparently treated as a similar class of beings. The Mahabharata gives instances of alliances between the beautiful daughters of the Nagas and men§. The marriage of Arjuna with *Ulupi* took place at Manipura, where Ulupi's son, king Babhruvahana reigned at the time of the horse-sacrifice by his uncle Yudhisthira. Whether this Manipura is identical with the town of that name in Assam, I am not yet prepared to say. Besides these marriages, we have the famous story of *Madalasa*, a Naga princess of incomparable beauty, and her union with king Kulvalàsva, celebrated

---

* Manu Smriti, Adhyaya I., Sloka 37.

† Sir W. Jones' Works, Vol. VIII., p. 97.

‡ See the following from the *Bhagavatgita*, Adhyaya X., verses 28 and 29:—

आयुधानामहं वज्रं धेनूनामस्मि कामधुक् । प्रजानांश्चास्मि कंदर्पः सर्पाणामस्मि वासुकिः ॥ २८ ॥

"Amongst the *Sarpas*, I am Vasuki."

Shankara's Commentary:—

सर्पाणां सर्पभेदानां अस्मि वासुकिः सर्पराजः

अनंतश्चास्मि नागानां वरुणो यादसामहं । पितृणामर्यमा चास्मि यमः संयमतामहं ॥ २९ ॥

"Of the Nagas, I am Ananta."

Shankara's Commentary:—

नागानां नागविशेषाणां नागराजः

I have translated above, only the parts required for this paper, which are underlined.

§ See the account of the marriages of Jaratkaru and Jaratkaru in the Adiparva, of Arjuna and Ulupi in the Sabhaparva, and others.

in the Markandeya Purana.* The *Nagas* and *Sarpas* of the Mahabharata and the Puranas appear as beings endowed with miraculous powers, able to assume any form and go anywhere without let or hindrance. Their country is described to be the nether region†. The author of the Surya-siddhanta places the Naga-Khanda (*i.e.* the country of the Nagas) in Bharata Varsha‡, which generally means India. Elsewhere, however, the same author describes the seven infernal regions as the beautiful abodes of the Nagas§. Bhaskaracharya in his *Goladhyaya* also describes the Naga-Khanda as a part of Bharata-Varsha, although he mentions this portion of his treatise as being founded on the Puranas¶. In the Bhagavata Purana, Vasuki and eleven other Nagas are stated as forming the string of the sun's chariot, one serpent being held to be sacred to each month‖. This makes the serpents to be the rays of the sun.

---

* Bibliotheca Indica. Sri Markandeya Purana, edited by the Rev. K. M. Banerjea, Adhyayas 20—41, pp. 131—255.

† The Mahabharata, Adiparva. Also, Amarkosa, Kanda I., Varga 8th.

‡ Translation by L. Wilkinson, Esq., edited by Pandita Bapu Deva Sastri, of Benares, p. 120.

§ Ibid, p. 79.

¶ Siddhanta-Siromani, Goladhyaya, Calcutta Edition of 1842, pp. 20 and 21.

‖ The Bhagavata Purana, Skanda XII., Adhyaya XI., verses 32—44:—

मध्वादिषु द्वादशसु भगवान् कालरूपधृक् ।
लोकतंत्राय चरति पृथक् द्वादशभिर्गणैः ॥ ३२ ॥
धाता कृतस्थली हेतिर्वासुकी रणकृन्मुने ।
पुलस्त्यस्तुंबुरुरिति मधुमासंनयंत्यमी ॥ ३३ ॥
अर्यमा पुलहोथौजाः प्रहेतिः पुंजिकस्थली ।
नारदः कच्छनीरश्च नयंत्येते स्म माधवं ॥ ३४ ॥
मित्रोत्रिः पौरुषेयोथ तक्षको मेनका हाहाः ।
रथस्वन इति ह्येते शुक्रमासं नयंत्यमी ॥ ३५ ॥
वसिष्ठो वरुणो रंभा सहजन्यस्तथा हूहूः ।
शुक्रश्चित्रस्वनश्चैव शुचिमासं नयंत्यमी ॥ ३६ ॥
इंद्रो विश्वावसुः श्रोता एलापत्रस्तथांगिराः ।
प्रम्लोचा राक्षसो वर्यो नभोमासं नयंत्यमी ॥ ३७ ॥
विवस्वानुग्रसेनश्च व्याघ्र आसारणो भृगुः ।

Such being the state of the most ancient authorities on this subject, it becomes rather a difficult problem to determine how the

---

अनुम्लोचा शंखपालो नभस्याख्यं नयंत्यमी ॥ ३८ ॥
पूषा धनंजयो वातः सुषेणः सुरुचिस्तथा ।
घृताची गौतमश्चेति तपोमासं नयंत्यमी ॥ ३९ ॥
ऋतुर्वर्चा भरद्वाजः पर्जन्यः सेनजित्तथा ।
विश्वऐरावतश्चैव तपस्याख्यं नयंत्यमी ॥ ४० ॥
अथांशुः कश्यपस्तार्क्ष ऋतसेनस्तथोर्वशी ।
विद्युच्छत्रुर्महाशंखः सहोमासं नयंत्यमी ॥ ४१ ॥
भगः स्फूर्जोऽरिष्टनेमिरूर्णआयुश्च पंचमः ।
कर्कोटकः पूर्वचित्तिः पुष्यमासं नयंत्यमी ॥ ४२ ॥
त्वष्टा ऋचीकतनयः कंबलश्च तिलोत्तमा ।
ब्रह्मापेतोऽथ शतजिद्धृतराष्ट्र इषंभराः ॥ ४३ ॥
विष्णुरश्वतरो रंभा सूर्यवर्चाश्च सत्यजित् ।
विश्वामित्रो मखापेत ऊर्जमासं नयंत्यमी ॥ ४४ ॥

Translation :—The *Bhagavan* [*i. e.* god possessed of the six complete excellences] asuming the form of time, goes through the twelve [months] commencing from *Madhu* [Chaitra], accompanied by different *ganas* [trains of attendant deities] for the maintenance of the creation. (32)

(1) *Dhata* (a sun); (2) *Kritasthali* (a celestial dancing girl); (3) *Heti* (a giant or demon); (4) *Vasuki* (a *Naga*); (5) *Rathakrit* (a *Yaksha* or a celestial being); (6) *Pulastya* (a *Rishi*); and (7) *Tumburu* (a celestial songster); guide *Madhu* (*Chaitra*) month [*i. e.* March and April]. (33)

(1) *Aryama*; (2) *Punjikasthali*; (3) *Praheti*; (4) *Kachhanira*; (5) *Pulaha*; (6) *Ojas*; and (7) *Narada* lead the month of *Madhava* [*i. e.* April and May]. (34)

(1) *Mitra*; (2) *Menaka*; (3) *Pourusheya*; (4) *Takshaka*; (5) *Rathasvana*; (6) *Rishi*; and (7) *Haha* lead the month of *Sukra* [*Jyeshtha*, *i. e.* May and June]. (35).

(1) *Varuna*; (2) *Rambha*; (3) *Chitrasvana*; (4) *Sukra*; (5) *Sahajanya*; (6) *Vasishtha*; and (7) *Huhu* lead the month of *Suchi* [*Ashadha i. e.* June and July]. (36.)

(1) *Indra*; (2) *Pramlocha*; (3) *Varya*; (4) *Elapatra*; (5) *Srota*; (6) *Angira*; and (7) *Visvavasu* lead the month of *Nabha* [*Sravana i. e.* July and August]. (37.)

(1) *Vivasvan*; (2) *Anumlocha*; (3) *Vyaghra*; (4) *Sankhapala*; (5) *Asarana*; (6) *Bhrigu*; and (7) *Ugrasena* lead the month of *Nabhasya* [*Bhadrapada*, *i. e.* August and September]. (38).

(1) *Pusha*; (2) *Ghritachi*; (3) *Vata*; (4) *Dhananjaya*; (5) *Suruchi*;

original spiritual worship of the Sarpa-devatas of the Vedas has now descended into an idolatrous worship of snakes and serpents. It cannot be said that the Vedic rites have been altogether done away with. I should say that over and above the old rites, new ceremonies and forms of worship have been introduced. So far as the new process of introduction of these additional ceremonies can be traced, it would appear to have begun with or after the Puranas. After the destruction of the Kshatriyas by Parasurama, the two next *avataras* described in the Puranas are those of Rama and Krishna. Now with each of these is associated an *avatara* of the chief Naga, Sesha, being in one case, Lakshmana,* younger brother of Rama, and in the other,

---

(6) *Gautama*, and (7) *Sushena* lead the month of *Tapa* [*Magha*, *i.e* January and February.] (39.)

(1) *Parjanya*; (2) *Senajit*; (3) *Varcha*; (4) *Airavata*; (5) *Ritu*: (6) *Bharadvaja*; and (7) *Visva*, lead the month of *Tapasya* [*Phalguna*, *i.e.* February and March]. (40.)

(1) *Amsu*; (2) *Urvasi*; (3) *Vidyuchhatru*; (4) *Mahasankha*; (5) *Tarksha*; (6) *Kasyapa*; (7) *Ritusena* lead the month of *Saha* [*Margasirsha*, *i.e.* November and December]. (41.)

(1) *Bhaga*; (2) *Purvachitti*; (3) *Sphurjja*; (4) *Karkotaka*; (5) *Urna*; (6) *Ayu*; and (7) *Arishtanemi* lead the month of *Pushya* [*Pousha*, *i.e.* December and Jannary]. (42).

(1) *Tvashta*; (2) *Tilottama*, (3) *Brahmapeta*; (4) *Kambala*; (5) *Satajit*; (6) *Richikatanaya*; and (7) *Dhritarashtra* lead to the month of *Isha* [*Asvina*, *i.e.* September and October]. (43.)

(1) *Vishnu*; (2) *Rambha*; (3) *Makhapeta*; (4) *Asvatara*: (5) *Sattyajit*; (6) *Visvamitra*; and (7) *Suryavarchha* lead the month of *Urja* [*Kartika*: *i.e.* October and November]. (44.)

[The seven names in verses 34 to 44 stand for the seven attendants of the classes enumerated in verse 33, and are here written in the order of the deities for which they stand. The narrative assumes the existence of a separate sun for each month, or addresses the sun in each month by a separate name.

The order of the months followed here is different from the ordinary one in use which is the following;—

(1) *Chaitra*, (2) *Vaisakha*, (3) *Jyeshtha*, (4) *Ashadha*, (5) *Sravana*, (6) *Bhadrapada*, (7) *Asvina*, (8) *Kartika*, (9) *Margasirsha*, (10) *Pausha*, (11) *Magha* and (12) *Phalguna*.]

* Brahmanda Purana, Adhyatmaramayana, Balakanda, Chapter IV., Sloka 17.

Balarama,* the elder brother of Krishna. The episode† of the serpent Kaliya, which is related in connection with the last *avatara*, has also served to bring serpents into greater prominence as objects of worship by the multitude. The stories connected with the Nagapanchami festival often refer to the serpent Kaliya. It is also to be observed that the daily prayers addressed by the Hindus to Vishnu and Siva, the second and third persons of the Hindu triad, associate the serpent with these deities in some relation. In the case of Vishnu, he appears as the bed on which that deity rests‡. (Drawing[2] annexed, showing Vishnu with the Sesha-Naga for his bed.) With Siva, the serpent is still more intimately connected. The sacred thread of Siva consists of a serpent, and his head is represented as being encircled with serpents. Although Siva is described as having five faces and three eyes, there is no temple in India known to have an image of this description. Indeed it is said that Siva must be worshipped in any form except that of a *Linga* ; but how far this is a Vedic idea is very doubtful. The present image of Siva consists, as is well known, of the human genital organs with a serpent coiled round one or both of them. Annexed are two diagrams[3] showing the position of the serpent in the daily devotional observances. In one case the Linga is wanting, and, in the other, both. It will require a separate disquisition to determine the place of Siva in reference to serpent-worship, but, inasmuch as the present form seems to be unknown to the Vedas, and appears to belong to the Pouranika or the post-Puranika period ; and, further, as it is observed (in the case of the Nagapanchami and the worship of the Linga generally) both by the followers of the Vedas as well as by those who do not believe in those sacred books, it seems probable tha the present form is not altogether Brahmanical, but partakes of another form of worship observed by those with whom the Vedic Hindus came into contact. It is here that the modern significance of the word *Naga* becomes very useful. *Naga* means a mountain, and *Nâga* a

* The Bhagavata Purana, Skanda X., Part I., Adhyaya I., verse 24.

† Ibid Chapter, XVI.

‡ The daily prayer to Vishnu begins thus ;—

"शान्ताकारं भुजगशयनं. "

Translation:—Of a serence form, having a serpent for his bedding, &c. The ordinary picture of Vishnu, as *Sesha-shayi* [*i.e.* resting on the Sesha-serpent,] is in accordance with this description.

person living thereon. The Medini Kosa makes a Naga to mean a wicked person, and in the eyes of a Vedic Hindu, any mountaineer not following the Vedas, would undoubtedly appear to be so. The only people, however, who now bear the name of Nagas, appear to be in a state very little, if at all, removed from sheer barbarism*. There is hardly any government amongst them†. The very idea of a political society amongst such a people is impossible, and any hope of getting light from that quarter is, therefore, at present futile. From the Administration Report of the Central Provinces for the year 1867-68‡, it appears that some Nagabansi tribe existed in the Patna state more than 800 years ago, and the Rani of this Naga family is said to have built several temples which still exist at a place called Rana Jamia. Should any inscriptions be discovered or any other documents bearing on the history of these Nagas be found, they will certainly throw light on the bearings of Naga or serpent-worship as it existed amongst these tribes, and probably also, on that of the Linga worship of Siva.

Looking at modern accounts, I find a short notice of the Naga-panchami, extracted into the Asiatic Journal for 1828 from the *Calcutta Government Gazette*§. And the third volume of the First Series of the journal of this Society contains a few lines regarding the observance of the Nagapanchami in a description of the township of Loni in the Puna district, by Thomas Cotes, Esquire¶. The Abbe Dubois dismisses the Nagapanchami in three lines||. But he gives a longer notice of the Serpent and its worship as observed in his time$. The Venerable Abbe suffered in his philanthropic task from difficulties which are well summed up by Lord William Bentinck in the opinion he recorded at the time of sanctioning the publication at the

---

* Prichard's Physical History of Mankind, Vol. IV., pp. 225—228.

† See the Annual Reports of the Administration of the Bengal Presidency for 1865-66, pp. 167—169, and for 1866-67, pp. 161, 162.

‡ Administration Report by J. H. Morris, Esq., Bengal C. S., for the year 1867-68, p. 65.

§ Asiatic Journal, Vol. XXVIII., pp. 334, 335.

¶ Transactions of the Literary Society of Bombay, Vol. III., p. 217.

|| Dubois on the Manners and Customs of the People of India, second edition, p. 234.

$ Ibid, pp. 324, 325.

expense of the Government*. I hope, however, we are situated much better at present. Such inquiries must, however, be conducted in a far different spirit from what used to be observed at one time; and an amusing instance of which is afforded by the disputes between the late Mr. Bentley and the writers in the *Edinburgh Review*†. I was led into an examination of these with a view to ascertain the date of the constellation Aslesha or Sarpas [*a* 1 and 2 Cancri] (in whose honour some of the serpent hymns in the Vedas are written), given in the Astronomy appended to the Vedas. I cannot say that I am yet satisfied with Mr. Bentley's reasoning on the question. The results of inquiries into serpent-worship and the history of the Nagas and Sarpas by the learned writers in the Asiatic Researches and the Journal of the Bengal Asiatic Society will also have to be studied in their bearings on the subject of this paper, though so far as I have observed, there is nothing that conflicts with my statements.

From a consideration of the authorities hitherto examined and the rites and ceremonies which now obtain amongst the Hindus, it

---

* Prefatory Advertisement to Abbe Duboi's work, p. vii.:—

"The result of my own observation during my residence in India is, that the Europeans generally know little or nothing of the customs and manners of the Hindus. We are all acquainted with some prominent marks and facts, which all who run may read; but their manner of thinking, their domestic habits and ceremonies, in which circumstances a knowledge of the people consists, is I fear in great part wanting to us. We understand very imperfectly their language. They perhaps know more of ours; but their knowledge is by no means sufficiently extensive to give a description of subjects not easily represented by the insulated words in daily use. We do not, we can not associate with the natives. We cannot see them in their houses, and with their families. We are necessarily very much confined to our houses by the heat; all our wants and business which would create a greater intercourse with the natives is done for us, and we are in fact strangers in the land. I have personally found the want of a work to which reference could be made for a just description of the native opinions and manners. I am of opinion, that, in a political point of view, the information which the work of the Abbe Dubois has to impart might be of the greatest benefit in aiding the servants of the government in conducting themselves more in unison with the customs and prejudices of the natives."

† I would refer the curious reader to Bentley's Historical View of the

seems to me that some spiritual beings were at one time, and are still, invoked and worshipped under the name of Sarpa-devatas: amongst others, the Earth under the name of Sarpa-rajni, or the serpent-queen. The Sarpas or serpents themselves appear in connection with the sun and his annual motion through the different mansions of the ecliptic according to the Hindu system of astronomy, as well as the Puranas. One of the twenty-seven lunar mansions, *Aslesha*, is described in the Vedas as having a serpent goddess for its presiding deity. The serpents themselves are represented as spiritual beings inhabiting the earth, the sky, the air, and the waters. After a time, the Nagas appear on the stage. The Puranas describe their incarnations, and their relationship to Vishnu and Siva, the preserving and destroying principles of the Hindu triad. Now for the first time appears to occur a promiscuous use of the words Sarpas and Nagas, describing these two species as spiritual beings. Yet their office seems to be the same as that ascribed to them in former times. The Mahabharata makes use of all the Nagas and Sarpas, to blacken the horse of the sun-god, and the Bhagavata-Purana uses the twelve principal *Nagas* and Sarpas to tighten the sun's chariot. Besides these offices, they appear in connection with the two principal deities in the Hindu triad as has been already stated. The punishment of the Sarpa Kaliya by Krishna, commemorated in the Bhagavata-Purana, forms the groundwork of the Nagapanchami holiday in various districts of this presidency. The destruction of serpents by Janamejaya and their salvation by Astika is an event which supplies another tradition entering into the every day life of the Hindus. The alliances between the Naga women of resplendent beauty and the ancient kings like Arjuna, Kuvalayasva and others, point to another era in the history of the Nagas in ancient times. Between this period, which, as viewed by our present lights, I would call the prehistoric period, and the time when the Amara-kosa and the Medinikosa were written, a considerable interval must have elapsed; for the word Naga is used in the two last-named works as the synonym of a wicked mountaineer, or an outcaste, which does not appear to

---

Hindu Astronomy (Edition of 1825), and the Edinburgh Review, Vol. I., 7th Edition pp. 42, 43, and Vol. X., 3rd Edition, pp. 455—471.

See also Kennedy's Hindu Mythology, where he undertakes to answer r. Bentley.

have been the case before. The present worship of serpents as idols, appears to be a mixture of the Pouranika ceremonies and the practices of the Lingayatas and the followers of other non-Vedic creeds. It is intimately connected with the worship of the Linga, and has acted and been acted upon by that mode of worship to a great extent. The principal seats of the Linga worship are situated on the mountains, and the origin of serpent-worship can also be traced there, although the ceremonial has doubtless been altered and amplified upon in the plains.

The actual practices and worship current on the Nagapanchami and such other holidays will be the very best help in unravelling the mystery of the serpent-worship as well as the higher worship intimately connected therewith, *viz.*, that of the Linga above-mentioned. I have tried to do this as briefly as possible, primarily in connection with the Nagapanchami holiday. But I think we should not rest contented until all the other ceremonials in connection with Sarpas and Nagas are critically examined in detail; and the result of these investigations compared with similar researches into the history of serpent-worship amongst other nations, both of ancient and modern times, in all parts of the world. I shall be glad to follow up the present notice with other papers bearing on the same important question, so far as Western India is concerned; but it would give me a greater pleasure to see a larger amount of justice done to it by some more competent hand.

THE SHRINE OF THE RIVER KRISHNA AT THE VILLAGE OF MAHABALESHWAR.

Read 14th July 1870.

In my last paper, I described a Hindu holiday, named the *Naga-panchami*, and offered in connection with that festival, certain observations relating to serpent-worship in Western India. I then stated what my researches had led me to conclude about the probable origin of this form of public worship; and its relation to a yet higher and older religion, the *Linga* worship, in the East.

On the present occasion, I propose to offer a few remarks on the shrine sacred to the river *Krishna*, at the village of *Mahabalesvara*, the modes of worship observed by pilgrims at this shrine, and the position of the different hereditary servants connected with the temple. This will be an indirect contribution to the discussion of serpent and *Linga* worship, and the actual living relationship of the wild hill tribes therewith.

The village of *Mahabalesvara* is situated on the *Sahyadri* range of mountains, the Great Western range usually termed the *Ghats*, and extending from the valley of the Tapti in the north to Cape Comorin on the south.

The village lies in lat. 17° 55′ N., and long. 73° 41′ E. It is about 75 miles S. E. of Bombay, and about 40 miles distant from the western sea-coast. This village is reckoned sacred by the Hindus, chiefly from its being situated at the source of the river *Krishna*, although there is a temple dedicated to the god *Mahadeva* at this village, and which is known as the temple of *Mahabalesvara*. The principal attraction of this place is the shrine of the river *Krishna*. A stone temple built about 125 years ago over the source of that river is annually resorted to from all parts of the neighbouring country, and every 12th year, when the planet Jupiter enters the sign of *Virgo*, pil-

grims from all parts of the country assemble at this place to bathe themselves in the sacred waters of the Ganges, which river is believed to make her appearance at this shrine at the beginning of that year and stay there for a twelvemonth, on a visit, it is said, to her younger sister, the *Krishna*.

Annexed is a plan of the temple, which was kindly prepared for me by Mr. Madhavrao Ramchandra Kelkar, of the Public Works Department.

A general description of the temple over the source of the river *Krishna* at *Mahabaleśvara* will not be out of place here. The temple stands at the foot of the hill facing the east, and with its auxiliary buildings occupies an area of about 6,000 square feet, enclosed by masonary walls 4 feet in thickness. The temple measures 36′ 6″ in lengh and 16′ 6″ in breadth, having an open courtyard in front, measuring 62′ 3″ in length and 32′ 6″ in width, which contains two cisterns having flights of steps leading down to their bottoms. Along the three sides of the courtyard is a cloister 9′ 6″ in width, with pillars 2′ square in front. In the Eastern face of the cloister is an entrance gate 4′ 9″ in width, with a passage of the same width, leading to the courtyard. Just opposite to the entrance gate and partially projecting into the cisterns is a pavilion, the *Nandi's* chapel. Here the *Nandi*, or sacred bull, is seated, over a platform raised three feet above the floor of the courtyard. By the sides of the cloisters, the visitors pass over a broad step and approach the temple. The plinth of the temple, as well as of the cloisters, is raised 3 feet above that of the courtyard and their floors paved with cut-stone. The temple is formed of two bays, with a portico in front. Each bay is divided into five parts, each 7′ 6″ in length, from centre to centre of the pillars, which measure 4½ feet from the surface of the floor. Semi-circular arches have been turned both longitudinally and transversely as shown by dotted lines on the plan. The construction of the roof is peculiar. Each subdivision of the bay forms a square, and is separately roofed in by brackets or corbels placed over the crown of the arches, the upper bracket projecting beyond the one just below it, thus forming a dome. The roof, therefore, when seen from inside, shows as many domes as there are sub-divisions in each bay ; while the outside of the roof has been brought in a line and finished off in steps running longitudinally, but

sloping transversely to carry down rain-water. The construction of the roof of the cloisters is similar to that of the temple. To the west side of the temple, and between the two walls, is the main source. Through the front wall, five holes or drains have been made, which represent the rivers Krishna, Venna, Koyana, Gayatri, and Savitri. The priests say, that two other rivers, namely, the Bhagirathi and the Sarasvati, flow from the two sides of the other *Gangas* or rivers. The first, once in every twelve years, as has been above described; and the latter, once in every sixty years. These holes, through which these two rivers are said to flow, are marked on the plan in the North and South corners respectively.

The water from the main source flows through the above-mentioned five holes into a channel in their front, and ultimately discharges itself through a spout resembling a cow's head into the cistern in the court-yard. Here the visitors to the temple bathe and perform all the ceremonies connected with their ablutions. The walls and roof of the temple, &c., are of a permanent construction. Cut-stone has been used throughout, and the building has a bold cornice all round.

This temple has been built by a Sattara Brahmana family, named Anagala. Brahmanical as this shrine is considered to be, the first hereditary officer connected with its management is a *Koli* or rather a family of *Kolis*. They are called in this connection *Ganga-Putra* (*i.e.*, sons of the *Ganga* or sacred river), and, as soon as a person has bathed, any offering that he makes, either in cash or in the shape of clothes, articles of food, &c., is appropriated by the *Kolis* connected with the establishment. What the pilgrims offer before bathing is alone retained by the Brahmana priests who make it a point of pressing the visitors to this shrine to make some offering before bathing in one of the cisterns, for their own profit.

At the temple of *Mahabalesvara* also the *Kolis* hold a hereditary position, and the *Guravas*, who worship the *Linga* in that temple, appear more closely allied to the hill tribes than to the inhabitants of the plains; they [*i.e.*, the *Guravas*,] have, however, no connection with the shrine of the *Krishna*, where the *Kolis* alone are the principal officers in charge. On looking into the traditions

connected with the two temples, and comparing their history with that of the famous shrine *Mahabalesvera* at *Gokarna* in North Kanara, I am inclined to hold that of the two shrines, situated at the village of Mahabalesvara, that of the Krishna is the more ancient, while that of Mahabalesvara is of a comparatively modern origin. It is true that if one goes to the temple of Mahabalesvera, a small rock is pointed out in the sanctuary, and he is shown several holes in that rock more or less full of water. These are described to be the seven sacred rivers,—Krishna, Venna, Koyana, Gayatri Savitri, Bhagirathi, and Sarasvati, in embryo; but there is nothing to connect these holes with the temple of the *Krishna*, where again one or two streams appear to be made to flow through five channels pointed out in the map. Nor is there any thing to show how the waters flowing through the cow's head into the cisterns below are connected with the five rivers, which take their rise at this village. The *Krishna*, in reality, ceases to flow from the second cistern, and its real source is in a small temple lower down, at the same village, at a little distance from the main building. This latter temple is a small building like an ordinary native country house, and overlooks the magnificent valley of the river *Krishna* below. The other rivers cannot be connected with the main source in any way. They rise in different valleys on the hills, and the Venna and the Koyana flow into the Deccan, while the Gayatri and the Savitri, flowing towards the west, form the Bankote river, at the mouth of which stands Fort Victoria. The *Venna* [called by the lower classes of natives *Yenna*] flows towards the east, and is absorbed into the Krishna at Mahuli, a village about 5 miles from Sattara. This river is mentioned in the Vishnu Purana*, and is apparently so named after the mountaineer king *Vena* (see the Bhagavata Purana, Skanda IV. Adhyaya 14; also Wilson's Vishnu Purana, pp. 99 and 100), who was slain by the Brahmana sages for his setting himself up above the Creator of the universe and the other gods of the Hindu Pantheon, and directing that all sacrifices should be offered to him instead of to the gods. Near the source of the river, within one-fourth of a mile from the Venna lake, in the Venna valley, there is a slab placed by the late chief of Sangli, Chintamanrao Appa Sahib Patvardhan, in a small temple

* See page 185, of Professor Wilson's translation of the *Vishnu Purana*.

erected in honour of that river. The Koyana seems to be a name derived either from Kuvena, or from *Koh*, a primitive term signifying a mountain. There is a fine bridge on this river, between *Mahabalesvera* and the village of *Para*, and this river, after flowing towards the Deccan, joins with the *Krishna* at *Karada*. This confluence is termed a love-embrace, from the direct meeting of the two rivers. The *Savitri* is the main stream which forms the Bankote river. Except in one of the previously mentioned holes in the temple of Krishna, the fifth river *Gayatri*, as a separate river, has no existence. Both these names are derived from the sun, and are looked upon as equally sacred by the pilgrims.

The principal river of the group is the *Krishna*, and this is the only river which appears to have its source near the shrine. The river *Krishna* has been known from ancient times. It has a *Pouranic* history of its own, entiled the *Krishna Mahatmya* [*i.e.* greatness of the Krishna]. It is described as a portion of the *Skanda*, one of the 18 principal Puranas, and, whatever its historical value, it is useful to explain the practice and observances which obtain at the present day at different places along its banks, till it discharges its waters into the Bay of Bengal. Its sanctity cannot be very ancient; for its name does not occur in the *Amarakosa*, a Sanskrit dictionary composed about or after the beginning of the Christian era; nor is the name found in any other *Sanskrit* dictionary of note on this side of India. It is mentioned in the *Vishnu Purana* *, and other *Puranas*, and its present importance probably dates from the time of the Rajas of Sattara, who have endowed this as well as the neighbouring shrine of Mahabalesvara. Tradition relates that a dynasty surnamed *More* reigned in that part of the country, and places are pointed out where their Queens used to bathe, where they put on their town-clothes and put off their wild dresses, whenever they came to the shrine. But even these do not carry us further than 350 years. I have not been able to discover any records pointing to a period more remote, nor have I met with any traditional accounts of dynasties older than the *Mores*.

A brief account of what the pilgrims have to do at this shrine may not be out of place. Pilgrims who resort to this shrine gene-

* See Wilson's translation, p. 184.

rally engage a *Brahmana* priest, called *Upadhyaya**. The general rule is, that whichever member of the priestly family first meets with a new-comer, that member becomes the *Upadhyaya* of that new-comer. Pilgrims are generally induced to give letters of appointment of which I annex two specimens†, omitting names. The getting of new pilgrims to entrust their priestship to themselves has become a sort of regular trade, and a visitor is at once surrounded by these hungry priests, with books in their hands, demanding his name, and surname, and his pedigree as far as it can be traced. If one's name is not discovered in their books, nor that of one of his ancestors, the most pressing importunities are used to obtain some sort of writing, giving the future officiating priestship to the family of the particular priest. This priest serves as a general guide, and, if intelligent, is of very great assistance in going through the various antiquarian corners of the place. The usual ceremonies at this shrine consist of bathing in the cistern, above described, the waters of which are generally allowed to remain in a very impure state; the worship of the five rivers at the sources marked on the plan, and the feeding the Brahmanas occupy the most conspicuous place in the pilgrim's curriculum. If the pilgrim should have lost his father, he performs *Shraddha*‡ to propitiate the manes of his ancestors. In all these ceremonies the Brahmana priests play the most important part. The gatherings of the pilgrims are the largest during the year in which the planet Jupiter comes into the sign called *Kanya* or Virgo. This is called the *Kanyagata*§, and is looked upon as the harvest season of the priests and the *Kolis* connected with the shrine. Every year, the day of *Sivaratri*¶ is a great day at this place; and in the month of *Phalguna* [generally corresponding with March and April] the festival of *Krishnabai*, as the river is generally called by its worshippers,

* *Upadhyaya* means a preceptor, or one from whom one can learn.

† See page 279.

‡ A feast at which some Brahmanas are worshipped in the name of the worshipper's ancestors. It is celebrated twice a year, and is also observed whenever a man visits a *Tirtha* or holy place.

§ The year during which the planet Jupiter comes in the sign of *Kanya* or *Virgo*.

¶ The 14th night of the dark half of the month of Magha, esteemed as one particularly sacred to Siva.

is celebrated with due ceremonies. Behind the hill from which the *Krishna* takes its rise, extends the forest called *Brahmaranya* or the forest of *Brahma*. The visitor is shown the spots where the gods of olden times are said to have performed their religious sacrifices. But beyond local traditions there is nothing to support these accounts. Mr. Postan's description* applies to the Krishna, which is the only river distinctly traceable to its source. "Few scenes," writes Mr. Postans, "are more lovely than the beautiful valley of the Krishna, as seen from the open temples of Mahabalesvara. The smooth and brightly gleaming waters, like a silvery thread, wind their quiet way between the richly-wooded hills, which form a vista of fertile shelter to the grassy banks; while the herds, feeding peacefully beside the sacred river, complete the scene, and afford a glimpse of pastoral beauty, the more fair and sweet, perhaps, as contrasted with the sublime mountain solitudes of the immediate neighbourhood."

In describing the shrines at the village of *Mahabalesvara*, it may be thought I ought to have begun with an account of the temple of *Mahabalesvara* itself, but I think the principal point of attraction and the older shrine is that of the river Krishna; and the temple of Mahabalesvara is of a more modern date, established after the model of the undoubtedly very ancient shrine of *Mahabalesvara* at *Gokarna* in north Kanara. *Gokarna* is a town on the sea-coast, in the district of Kanara, about 25 miles to the south of *Kadavada* (now called Karwar). This spot is celebrated from the times of the Mahabharata for its sanctity†.

---

* See Postan's Western India in 1838, vol. II., pp. 267 and 268.

† The Mahabharata, Vanaparva, Chapter 85, Slokas 24 to 27.

"अथ गोकर्णमासाद्य त्रिषु लोकेषु विश्रुतं ॥ समुद्रमध्ये राजेन्द्र सर्वलोकनमस्कृतम् ॥ २४ ॥ यत्र ब्रह्मादयोदेवा ऋषयश्च तपोधनाः ॥ भूतयक्षापिशाचाश्च किन्नराः समहोरगाः ॥ २५ ॥ सिद्धचारणगंधर्वा मानुषाः पन्नगास्तथा ॥ सरितः सागराः शैला उपासन्त उमापतिम् ॥ २६ ॥ तत्रेशानं समभ्यर्च्य त्रिरात्रोपोषितोनरः ॥ अश्वमेधमवाप्नोति गाणपत्यं च विन्दति ॥ २७ ॥ उष्य द्वादशरात्रं तु पूतात्मा च भवेन्नरः ॥ "

Translation.—Oh! best of the Kings! then he came to the town of *Gokarna*, near the sea, which is well known to the three worlds, and is

And it is also more particularly described in the *Skanda Purana*. Its glories are also celebrated in the vernaculars, and thousands of pilgrims annually resort to this shrine. It is one of the oldest *Linga* temples in Southern India, and the following is a brief traditional account of its establishment as now received by its devotees, for which I am indebted to a Kanara friend.

Story of Gokarna Mahabalesvara.*

"*Gokarna* is one of the most celebrated places of *Linga* worship in India. It is a small seaport town in the district of North Kanara, about 25 miles southward from Kadwada (or Karwar as it is now called.) The name Gokarna (from *go*, a cow, and *karna*, an ear) has its origin in the natural shape of the place, which, it is said, resembles the form of a cow's ear. The *Linga* worshipped here is known by the appellation of Mahabalesvara, whose temple, a massy structure of stone, having little pretentions to architectural beauty, is situated very near to the seashore. The origin of this place of worship is ascribed to *Ravana*, the king of the Rakshasas, who ruled in Ceylon. Mention is made of *Gokarna* in the Mahabharata and other Puranas. It has besides, always enjoyed a great celebrity throughout the length and breadth of India.

"The details of the story which connects Ravana with the origin of the place are as follow:—On a certain occasion Ravana happening to see his mother worship a *Linga* made of earth, felt that both his power as a king and his zeal as a devotee of *Siva* were slighted. He would give himself no rest until he proved to his mother that he was not such an unworthy son that while he was in existence she should

---

adored by all men (24), where stay before the god, Siva, gods beginning with *Brahma*, austere sages, *Bhutas* (a class of spirits), *Yakshas* (another class of spirits), *Pisachas* (demons), *Kinnaras* (heavenly songsters), huge reptiles, (25) *Siddhas* (sages), *Charanas* (bards), *Gandharvas* (heavenly songsters), men and serpents, rivers, oceans, [and] mountains. (26). There a man who worships the god *Siva* and observes a fast for three days and nights obtains the fruit of performing a horse sacrifice, and lordship over men. (27). And one who lives there for 12 days and nights has his soul purified.

* See the *Sivalilamrita*, a Marathi poetical work, describing the exploits of Siva, Chapter IV.

have to worship a *Linga* made of earth. He offered to get for her the *Prana Linga* (*i.e.*, the ethereal body) of Siva himself, and forthwith hastened to the fountainhead on the mountain *Kailasa*. Nor was he late in accomplishing his object. Being moved by his fervent prayers, *Isvara** presented him at once with his own *Prana Linga*. This alarmed the other deities, who were afraid that the possession of this symbol of divine power might add to the aggrandizement of their oppressor and enemy. Accordingly it was resolved to free the *Prana Linga* from the hands of the tyrant by all means. *Vishnu* and *Ganapati* were the two instruments that were employed to effect this purpose. When Ravana had come near Gokarna, Vishnu held his discus against the sun, and made it appear to the world below that the time of the evening prayers was at hand. Though a giant, Ravana was descended from a Brahmana family. He performed the Brahminical rites and ceremonies with the same punctuality with which any other Brahman would do. He therefore could not let the hour of sunset pass by without offering the evening prayers. But this he was not in a position to do while bearing the *Linga* in his hands. Neither could he place the Linga on the ground; because he had been told that the moment he placed it on ground, it would become firmly fixed there so as to be immoveable afterwards. While in this fix he chanced to see Ganapati, and begged of him to hold the Linga for a little while. Ganapati consented to do so provided he would be relieved soon. Ravana accordingly handed up the Linga to Ganapati and went to perform his prayers. He had scarcely finished them, when Ganapati called him three times, and, pretending to feel the burden too heavy for him, placed the Linga on the ground. As was expected, it became firmly planted there. Meanwhile, Vishnu withdrew his discus from the sun, and Ravana, to his great astonishment, saw that there was yet time for the sun to set. Returning to the place where he had left Ganapati, he found the Linga placed on the ground. His anger at the event knew no bounds, and, mustering up all his strength, he attempted to root up the Linga; but unfortunately for him it had become immoveable. He made five attempts, four of which brought into his grasp only as many pieces of the Linga; but as nothing short of the Linga in its entirety could satisfy him, he threw the pieces aside. In the fifth attempt to take out the main part, his strength

* A name of Siva.

failed him, when he cried out, Oh! *Mahabala* (meaning *Great power*)! And this is said to be the origin of the appellation, *Mahabalesvara*. Strange as this story may appear, the evidence which is pointed out to the sceptic in support of its truthfulness is still more curious. In the neighbourhood of the Mahabalesvara's temple, there is an image of Ganapati having in its head a fissure which is represented to be the mark of a blow which Ravana gave him out of anger in consequence of his having placed the Linga on the ground. With reference to the four pieces severed from the principal Linga, tradition adds that in time each became an object of worship to the people living in the neighbourhood of the place where it happend to fall. Temples have been built in all the four places in honour of the four Lingas thus produced, and one and all of these temples occupy a prominent place in the list of the Devasthanas in North Kanara. Their names are as follows :—1, Murdesvara in the Taluk of Honore ; 2, Gunavatesvara in the same Taluk ; 3, Dharesvara in the Coompta Taluk ; 4, Sejesvara in the Karwar Taluk. Gokarana is a celebrated place of pilgrimage. Thousands of people from all parts of India resort to it during the annual Sivaratri festival, which takes place in the month of *Magha* (February and March). In the eyes of the people of Kanara, *Gokarna* is holier than Benares itself. The following *Sloka*, which may be heard from the mouth of every individual in the country, describes the feeling of veneration which the people entertain for *Gokarna* :—

"गोकर्ण च महाकाशी विश्वनाथो महाबलः । कोटितीर्थं च गंगायाः सामुद्रमधिकंफलं ॥ "*

"Nor is real evidence of the superior sanctity of *Gokarna* wanting. There is a temple on the banks of a small river called *Tamraparna*, very near to the temple of Mahabalesvara dedicated to the goddess *Tamra Gauri*, who is represented as a human figure holding in one of her hands a pair of scales for weighing the relative sanctity of *Gokarna* and *Kasi*. The scale is, of course, turned in favour of the former !

* *Translation* :—"Gokarna is also a great *Kasi* [*i. e.* a great Benares]. The god Visvanatha is very powerful, the sacred *Kotitirtha* is greater in its marine sanctity than the *Ganga*."

The original is incorrect ; and I have given it as nearly in its original form as possible, so as to show what it is that the people really believe.

"II. Thare are so many *Tirthas* (or holy places) and *Lingas* in Gokarna that it would be idle, if not difficult, to attempt to give a more accurate account of them than one furnished by a saying in the Canarese lanagnage. which when translated into English would mean, 'At Gokarna a stone is *Linga* and water is a *Tirtha*'."

This, it appears to me, is the original *Mahabalesvera* of which we have a mere copy at the village of Mahabalesvara. The above tradition of *Gokarana* points out to the origin of these places of Linga worship by the influence of, if not amongst, the wild tribes of the mountains of whom *Ravana* is a fair representative. The actual position of the *Kolis* at the temples of the *Krishna* and also of *Mahabalesvera* appears to confirm the above conclusion. The priests point out in the temple of Mahabalesvara the source of the *Krishna* ; but unfortunately for them, the source of the river is at a higher altitude than the Mahabalesvara temple, and their story must therefore be put down as a mathematically proved fable. *Krishna*, being considered a sacred river, had to be referred to a sacred source, and the perversity of man seems to have here set aside the noble works of God—the true source of the river—and assigned a low symbol, invented by the wild tribes of the hills, for the origin of the sacred river.

The serpent is connected with both these temples ; and from the *Linga* temples he seems to be quite inseparable. In the latter, he is represented as being coiled round the *Linga*, while in the temple of the *Krishna*, a living one is supposed to be guarding its sources.

The *Ganga* (as the sacred Ganges is called) is said to have its origin in the peaks of the sacred *Kailasa*. And all sacred rivers are now called by the name of *Ganga* and their origin is supposed to be the head of Siva. The god *Siva* has however now come to be universally represented by the *Linga* brought by the wild *Ravana* from which the serpent appears to be inseparable. The priests at both the shrines are primarily the wild or at least non-vedic tribes. Some of these wear the Linga, and these do not partake of food prepared by a Brahmana ; and *Brahmans* are prohibited from becoming officiating priests at Siva's temples, and cannot partake o any offerings there made. There is no doubt that the people do consider that there is something awkward, if not obscene, in Linga

worship. Because, so far as I am aware, only young girls who have not arrived at maturity, and old ladies who have passed the period of child-bearing, are alone permitted to enter a Siva temple. Others have to perform their worship by deputy. The Pouranic account of Mahabalesvara itself is very meagre, and is reserved for another occasion.

Letters of appointment given to priests, see page 273.

श्री

वेदमूर्ति राजमान्य राजश्री महाबळेश्वरकर, स्वामीचे सेवेशीं;

विद्यार्थी , वस्ती तारापूर प्रांत वसई तर्फ साष्टी हल्लीं मुक्काम श्रीमहाबळेश्वर, कृतानेक शिरसाष्टांग नमस्कार विनंती विशेष. आह्मीं कुटुंब सुद्धां श्री कृष्णस्नाना निमित्त मुक्काम मजकुरीं आलों. येथील तीर्थोपाध्यायपण तीर्थ० गंगाभागीरथी रमा आजी शके १७१३ चे सालीं आली होती तिणें तुह्मांस लिहून दिलें. तो लेख वडिलांचे नांवाचा पाहून आह्मीहि त्या लेखा अन्वयें तुमचें पूजन करून श्री महाबळेश्वरचें तीर्थोपाध्यायपण तुह्मांस दिलें असे. आमचे कोणी वंशांतील येतील तें तुह्मांसच पुजितील. साल्मजकुरीं फाल्गुन मासीं आमचे आजे तीर्थ०

येथें आले होते; त्या वेळीं आपण घरीं नव्हतां. यामुळें गैर माहित ह्मणून लेख दुसरा वे० यांस लिहून दिला. परंतु तो लेख दुबार झाला ह्मणून मशारनिल्हेनीं तें पत्र रद्द करून वेद०

महाबळेश्वरकर याजपासून गंगेंत सोडविलें. सबब तें पत्र रद्द झालें. तें पत्र मागती कोणीं धरून ठेविलें असल्यास रद्द असे. मिती श्रावण वद्य ८ शके १७४९ सर्वजित् नाम संवत्सरे. हस्ताक्षर खुद.

श्री. ४१

वेदमूर्ति राजश्री महाबळेश्वरकर, स्वामीचे सेवेशीं;

विद्यार्थी आजे पणजे , वस्ती मौजे गवें तालुके जालगांव. आपण त्रिवर्ग महाबळेश्वरचे यात्रेस आलों; ते समयीं तुह्मांस उपाध्यायिक दिलें असे. आपले वंशीचे येतील ते

तुह्मांस पूजितील. शके १७१३ विरोधकृत नाम संवत्सरे, माहे आश्विन शुद्ध १५.

[*Translation of the foregoing.*]

To

Vedamurti [*i.e.* Vedas Personified] ..... of Mahabalesvara ;
In your worship's service.

[Your] pupil.....of Tarapur, *Pranta* [*i.e.* district of] *Vasai, Tarf* [*i.e.* sub-district] Salsettee, now at Mahabalesvar ; Salutations. The particular request : [is]—We have come here, with our family members, for bathing in the river *Sri Krishna*. Our grandmother, the worshipful Rama, had come here in the Sake 1713 ; when she gave in writing the right of *Upadhyaya* as regards this sacred place. Seeing that writing given by our elders we have, agreeably thereto, paid you our respects and given you the office of our *Tirthopadyaya* of Mahabalesvara. Those of our decendants who may come here, shall pay their respects to you only. In the month of *Phalguna* of the current year our grandfather, the worshipful..... .....had come here, at which time you being not at your place, and he [our grandfather] being ignorant [of the circumstances] gave another writing to *Veda-murti*.....But that writing being redundant, it was cancelled by him [our aforesaid grandfather] and by the hands *Veda-murti*.....of Mahabalesvara was dropped into the Ganga [*i.e.* the river]. Therefore it is cancelled.—If any person has recovered the writing, it is hereby cancelled. Dated the 8th Sravana Vadya Sake 1749 ; name of the year Sarvajit. [My]own handwriting.

Sri (41).

To

Veda-murti Rajasri.....of Mahabalesvara ;
In your worship's service,

[Your] pupil ..... , [our] father .....our grandfather.....inhabitants of Mouje Gave, Taluk Jalgam. We three individuals had come to Mahabalesvara when we gave you the office of our *Upadhyaya*. Those of our descendants who may come here, shall pay their worship to you.—Dated the 15th of *Asvina Suddha*, Sake 1713, name of the year Virodhakrit.

SHRINE OF MAHABALESVARA.

[*Read 12th January 1871*].

MAHABALESVARA is the shrine after which the chief sanitarium in Western India is named. It is a shrine at which the *linga* symbol is worshipped. There is no actual representation of the *linga* in the temple; but a rock from which water oozes out in some places is reckoned as a *linga*, and encircled by the usual accompaniments, which have been artificially supplied. In my last paper I have mentioned the seven sacred rivers said to take their rise at this spot. The temple is a common building, without any architectural pretensions. There is a *nandi* (or the sacred bull) seated at a distance and opposite to the *linga*. There is nothing peculiar about the worship offered to this shrine; but as a place laying claim to extraordinary sanctity in this part of India, it may be interesting to enquire and record what can be obtained with regard to its history as now received by its worshippers.

Like most other Hindu shrines, Mahabalesvara has a *Pouranika* history of its own. It consists of two *Adhayayas* or chapters, containing in all 163 *slokas* (or verses). In literary performance, it is very poor; and in some places it is quite incorrect. The copy as now presented to the Society has been made and compared by myself with the original manuscript obtained from one of the priests at the shrine. This tract gives a description of the village, and the sacred places there, as now pointed out by the priests, and is evidently a modern composition. I content myself with a brief abstract of the poem, as there is nothing important to justify my placing the whole translation before the Society.

The poem states that on the top of the *Sahyadri* mountain are five *Gangas* or rivers, and these take their rise in the locks of hair on the head of the god Mahabalesvara. They are (1) Krishna, (2) Veni [or Venna], (3) Kakudmati [or Koyana], (4) Gayatri, and (5) Savi-

tri. The first is accounted equal in sanctity to Vishnu, the second to Siva, and the third to Brahma; the two last are the wives of the god Brahma. The first three flow towards the East, and enter the Eastern sea (the Bay of Bengal); and the Savitri, combining with the Gayatri, flows into the Western (or Arabian) sea.* There are eight *Tirthas* (*i.e.* places for man's salvation); 1 Brahma, 2 Rudra, 3 Vishnu,† 4 Chakra, 5 Hansa, 6 Aranya, 7 Malapaha, and 8 Pitrimuktida. There are three *lingas* of Siva:—1 *Mahabala*, 2 *Atibala*‡, and 3 *Kotisvara*. A portion of this village, covered with jungle, is called *Brahmaranya* (or the forest of the god Brahma, the creative principle of the Hindu triad). It is said that when Brahma formerly performed sacrifices in this forest, the two rivers Gayatri and Savitri were produced. When Jupiter enters the sign of *Virgo*, once in twelve years, there is said to be a greater sanctity in bathing at this spot in that season. And this I have already mentioned in my previous paper. This place is also called Brahma-Kshetra and the places fit for devotion at this spot are termed *vedasramas*. In the Krishnamahatmya (*i. e.* greatness of Krishna), also described as a portion of the *Skanda-purana*, the story of Mahabalesvara is also mentioned, and it likewise occurs in Kartika-mahatmya from the *Padma-purana*; but there are some important variations. I have said above that this tract appears to me to be a modern compilation. This I conclude from its language and style as compared with those of what I may call the genuine old *Puranas*. The *Skanda-purana*, of which it is said to form a part, is one of the lost *Puranas*. A few detached chapters occur here and there in the shape of *Sthala-mahatmyas* (*i. e.*, descriptions of the greatness or sanctity of particular localities). A portion named the *Bramhottara Khanda*§ has been thus rescued from

---

* Where the river Savitri discharges its waters into the Western sea it is said that there is a *tirtha* named *Sukla*, the sanctity of which is reckoned equal to that of 350 crores of *tirthas*.

† It is stated that before the creation of the world Brahma, Rudra, and Vishnu were performing penances, &c., at these places; hence the names of these three *tirthas*.

‡ There were two giants named Mahabala and Atibala, who propitiated Brahma and other gods, and at their desire the gods granted that these two *lingas* should be named after the two giants.

§ See printed edition of *Sake* year 1788 (A. C. 1866): Bombay.

the ravages of time; and if other fragments could be collected and published, it would assist the student of Indian history and philosophy, and prevent the concoction of modern poems under ancient colours. This useful work is being done to a limited extent in Madras*, though not so exhaustively as I should wish. How far the Bombay Manuals or Gazetteers would work to this end I do not know; but more can be done by private individuals to help this object than by the public authorities, to whom the inner strata of our social structure are not, as a rule, yet accessible. Besides the objects above stated, the *Mahatmyas* would subserve another useful purpose, and that is to place within our reach some information about things which are gradually passing away, and which must be gathered by personal enquiries by those who search for the MSS. As an example, I may mention that at a place near Basseen (Vasai is the correct spelling), called *Nirmala*, a tomb of the great *Sankaracharya*† is shown to the pilgrims to this day. As the author of several *Vedantika* works of undisputed authority, and the apostle of the system of higher doctrines of Brahmanism as they obtain to this day, the great *Sankaracharya* has been no ordinary individual. That his place of interment is *Nirmala*, in our own neighbourhood, is a statement for which there seems to be no authority, beyond local tradition. At all events the point has yet to be determined; and it is a question which may well be discussed when the *Nirmala-mahatmya* comes under review. But the Society will be perhaps surprised to hear that there is a large published poem in Marathi, which assumes the sanction of the *Sankaracharya*‡ to a Marathi *Nirmala-mahatmya* (*i. e.* the greatness or sanctity of *Nirmala*), and which professes to derive its inspiration from the *Padmapurana*. Now the hollowness of these pretensions is apparent. Our oldest Marathi authors now extant are Mukundaraja and Dnyanesvara; and they come long after *Shankaracharya*§. They wrote in Marathi, which is different in grammar, and style, from the Marathi as we now speak and write it, and in which

* See part III. of the Madura Manual, by J. H. Nelson, M.A., Madras Civil Service. Madras: 1868.

† The expounder of the Vedanta philosophy.

‡ शंकराचार्यसम्मत निर्मलमाहात्म्य. Bombay: Sake year 1785 (A. C. 1863-64).

§ Lived in the 8th century of the Christian era.

this poem has been written. The author's name does not appear; but it is published under the high sanction of the name of *Sankaracharya*, and as such, no doubt, may impose on many an unsuspecting devotee. I give this as one of the many instances wherein the course of contemporary history and morals is thus corrup'ed because of the clouds of uncertainty and obscurity which still enshroud our *Pouranika* literature. I have already pronounced my opinion on the *Mahabalesvara-mahatmya* presented to the Society to-day.

I shall now return to the shrine again, and state what I conceive to be its place in Indian history. *Mahabalesvara* is mentioned in the poem above alluded to, and in the poem on the *Krishna*; and its importance dates from the time of the Maratha* kings of Satara. Sivaji and his successors endowed it; and it is now one of the recognized Hindu places of pilgrimage in Western India. It has no pretensions to the antiquity of Gokarna Mahabalesvara in *Kanada*, which is noticed in many of our oldest works, and above all in the Skanda-Purana. This Mahabalesvara is, therefore, a modern establishment, after the older shrine in the South. It is nowhere mentioned in the enumeration of the *Jyotirlingas* (*i.e.*, the 12 *luminous* symbols), the names of which are pronounced by all *Saiva* (*Smarta*) and Bhagavata Hindus every morning either in Sanskrit or Prakrit prayers†.

---

* See "Life of Ramdas." in Marathi. Rombay: Sake 1792 (A. C. 1860-71).

† The following are prayers repeated in *Kanada*.

"सौराष्ट्रे सोमनाथं च श्रीशैले मल्लिकार्जुनम्।
उज्जयिन्यां महाकालं डाकिण्यां भीमशंकरम्॥
परळयां वैद्यनाथं च ओंकारं विमलेश्वरम्।
सेतुबंधे तु रामेशं नागेशं दारुकावने॥
वाराणस्यां तु विश्वेशं त्र्यंबकं गौतमीतटे।
हिमालये तु केदारं घृष्णेशं तु शिवालये॥
एतानि ज्योतिर्लिंगानि प्रातरुत्थाय यः पठेत्।
जन्मांतरकृतं पापं स्मरणेन विनश्यति॥"

"सौराष्ट्रदेशे विशदेतिरम्यं ज्योतिर्मयं चंद्रकलावतंसम्।
भक्तिप्रदानाय कृपावतीर्णं तं सोमनाथं शरणं प्रपद्ये॥ १॥
श्रीशैलशृंगे विबुधातिसंगे तुलाद्रितुंगेपि मुदा वसंतम्।

Nor have I met with it in the *Kedara Khanda*, a portion of the *Brahmavarta* Purana, nor in the *Linga* Purana. It is on this account that I place this shrine amongst modern establishments, and its *Pouranika* history, as now current, I certainly class, for the present at least, among poems of very doubtful antiquity.

तमर्जुनं मल्लिकपूरमेकं नमामि संसारसमुद्रसेतुम् ॥ २ ॥
अवंतिकायां विहितावतारं भक्तिप्रदानाय च सज्जनानाम् ।
अकालमृत्योः परिरक्षणार्थं वंदे महाकालमहं सुरेशम् ॥ ३ ॥
कावेरिकानर्मदयोः पवित्रे समागमे सज्जनतारणाय ।
सदैव मांधातृपुरे वसंतमोंकारमीशं शिवमेकमीडे ॥ ४ ॥
पूर्वोत्तरे प्रज्वलिकानिधाने सदा वसंतं गिरिजासमेतम् ।
सुरासुराराधितपादपद्मं श्रीवैद्यनाथं तमहं नमामि ॥ ५ ॥
आमृंदसंगे नगरेतिरम्ये विभूषितांगं विविधैश्च भोगैः ।
सद्भक्तिमुक्तिप्रदमीशमेकं श्रीनागनाथं शरणं प्रपद्ये ॥ ६ ॥
हिमाद्रिपार्श्वे चटुले रमंतं संपूज्यमानं सततं मुनींद्रैः ।
सुरासुरैर्यक्षमहोरगाद्यैः केदारमीशं शिवमेकमीडे ॥ ७ ॥
सह्याद्रिशीर्षे विमले रमंतं गोदावरीतीरपवित्रदेशे ।
यद्दर्शनात्पातकमाशुनाशं प्रयाति तं त्र्यंबकमीशमीडे ॥ ८ ॥
सुताम्रपर्णीजलराशियोगे विबद्ध्य सेतुं विशिखैरसंख्यैः ।
श्रीरामचंद्रेण समर्चितं तं रामेश्वराख्यं नियतं नमामि ॥ ९ ॥
योडाकिनीशाकिनिकासमाजैर्निषेव्यमाणः पिशिताशनैश्च ।
सदैवभीमाद्यपदप्रसिद्धं तं शंकरं भक्तिहितं नमामि ॥ १० ॥
सानंदमानंदवने वसंतमानंदकंदं हतपापवृंदम् ।
वाराणसीनाथमनाथनाथं श्रीविश्वनाथं शरणं प्रपद्ये ॥ ११ ॥
इलापुरीरम्यशिवालयेस्मिन् समुल्लसंतं च जगद्वरेण्यम् ।
वंदे महोदारतरस्वभावं घृष्णेश्वराख्यं शरणं प्रपद्ये ॥ १२ ॥
ज्योतिर्मयं द्वादशलिंगकानां शिवात्मनां प्रोक्तमिदं प्रियेण ॥
स्तोत्रं पठित्वा मनुजोतिभक्त्या फलं तदालोचनजं भजेत ॥ १३ ॥
इति श्रीद्वादशालिंगात्मकं स्तोत्रं संपूर्णम् ॥ ० ॥ "

SALIVAHANA AND THE SALIVAHANA SAPTASATI.

[*Read 19th March 1873.*]

SA'LIVAHANA, sometimes called Satavahana or Satavahana, is the name of the Hindu king after whom the present Saka era current in Maharashtra is named. He is popularly believed to have been descended from a *Kumbhara*, or bricklayer. A legend named *Salivahana-charitra*, written in Marathi, has been printed and published, and it gives the traditionary account of his birth from a virgin aged under four years, and his exploits, and the establishment of his era to the south of the Narmada. When a Maratha Hindu makes a religious determination about anything, he has to repeat the period of time that has elapsed since the advent of the *Kali-yuga*, the number of the incarnation believed to preside over the destinies of the world, the geographical position occupied by the performer of the ceremony and the time with reference to the Salivahana era in the calendar. This is the era generally observed to the south of the Narmada. To the north of that river, the Vikramaditya era is observed in most places.

In the popular enumeration of the founders of *sakas* or eras, Salivahana stands the third. Thus,

युधिष्ठिरो विक्रमशालिवाहनौ
ततो नृपः ख्याद्विजयाभिनंदनः ।
ततस्तु नागार्जुनभूपतिः कलौ
कल्की षडेते शककारकाः स्मृताः ॥

Translation:—In the *Kali* age (come) Yudhisthira, Vikrama (and) Salivahana, afterwards will be the king Vijayabhinandana, then the king Nagarjuna, (and) the sixth Kalki : these six are stated to be the makers of *Sakas* or eras.

The calculators of the current native almanacs describe the places of these founders, and the duration of their eras. Thus, beginning with the first, Yudhishthira,* he is stated to have lived at Indraprastha (supposed to be somewhere near Dehli), and the duration of his era to be 3044 years up to the time of Vikrama of Ujjayini, whose era is said to have extended to 135 years, until the advent of Salivahana at Pratishthana†, whose era will, it is said, last 18,000 years. He will be succeeded by the following :—

(4) The fourth, Vijayabhinandana, at Vaitarani‡, at the junction of the Indus ; his era 10,000 years.

(5) The fifth, Nagarjuna, at Dharatirtha, in the Gauda country § ; his era 400,000 years.

(6) The sixth, Kalkin, at Karavira-pattana [or Kolhapura), in the Karnataka ; his era 821 years.

The Saka year of Salivahana begins on the first day of the first half of *Chaitra*.

Vasanta-navaratra (or the spring festival of nine nights sacred to the Durga) begins on the first day of the Saka year. These years

---

* बृहत्संहिता. अ०–१३ श्लो० ३

आसन्मघासु मुनयः शासति पृथ्वीं युधिष्ठिरे नृपतौ ।
षड्द्विकपंचद्वियुतः शककालस्तस्य राज्ञश्च ॥ ३ ॥

Translation :—When Yudhishthira was holding sway over the earth *Ursamajor* was in the tenth constellation, *Magha* (Regulus); the era of that king was 2526 years. This differs from the popular tradition by 518 years.

† The modern town of Paithana, on the Godavari, in the Nizam's dominions, E. Long. 75°28′, N. Lat. 19°29′.

‡ There is no such town in Sindh where the Indus joins the sea, but probably the place of junction itself is so called.

§ Adjoins Vanga, or Bengal. See the *Brihatsanhita* of Varahamihira Ch. 14, v. 7, p. 88, Calc. ed. Probably this is Behar. One of the districts of the Nizam's territory is called Dharasinha or Dharaseva.

are classed into cycles of sixty* each, and each year is named from some supposed quality inherent in it. Thus the twenty in the beginning are believed to represent years of prosperity; while the last twenty are considered to be inauspicious. Vishnu is the presiding deity of the first twenty, Brahma that of the second, and Siva reigns from the forty-first to the sixtieth. The last year of this cycle is *kshaya*, which means annihilation; and the three before it are *rudhirodgari*, causing to vomit blood, *raktakshi*, red-eyed, and *krodhana*, angry. These are believed to be unpropitious years. I may mention that the last four years of the last cycle, which were Saka 1785-88, or A.C. 1864-65 to 1867-68, were understood by the people of Western India to be years fraught with evil. And when the American war broke out in the years *raudra* the destroyer's year, and *durmati*, the bad-motived, people supposed that some calamities would befall the world. Every worldly event is interpreted by these signs; and people are in a ferment when some war or other bloodshed takes place in these years. These sixty-years' cycles are common to the eras both of Vikramaditya and Salivahana. The latter is pre-eminently the prince of Western India or rather a Maratha, if I may use the expression.

His capital was Pratishthana, the modern Paithana, on the Godavari. The traditionary accounts connect him with Maharashtra in every respect. Hemachandra, the great Jaina writer, who flourished in the twelfth century of the Samvat era, includes Salivahana among the four learned kings named in his Dictionary. They are:—

* They are named thus:— १ प्रभव. २ विभव. ३ शुक्र. ४ प्रमोद. ५ प्रजापति. ६ अंगिरा. ७ श्रीमुख. ८ भाव. ९ युवा. १० धाता. ११ ईश्वर, १२ बहुधान्य. १३ प्रमाथी. १४ विक्रम. १५ वृष. १६ चित्रभानु. १७ सुभानु. १८ तारण. १९ पार्थिव. २० अव्यय. २१ सर्वजित्. २२ सर्वधारी. २३ विरोधी. २४ विकृति २५ खर. २६ नंदन २७ विजय. २८ जय. २९ मन्मथ. ३० दुर्मुख. ३१ हेमलंब. ३२ विलंबी. ३३ विकारी. ३४ शार्वरी. ३५ प्लव. ३६ शुभवृत्. ३७ शोभन. ३८ क्रोधी. ३९ विश्वावसु. ४० पराभव. ४१ प्लवंग. ४२ कीलक. ४३ सौम्य. ४४ साधारण. ४५ विरोधकृत्. ४६ परिधावी. ४७ प्रमादी. ४८ आनंद. ४९ राक्षस. ५० नल. ५१ पिंगल. ५२ कालयुक्त. ५३ सिद्धार्थ. ५४ रौद्र ५५ दुर्मति. ५६ दुंदुभि. ५७ रुधिरोद्गारी. ५८ रक्ताक्षी. ५९ क्रोधन. ६० क्षय.

These occur in old astronomical works, like *Naradasanhita*.

I, Vikramaditya; 2, Salivahana; 3, Munja; 4, Bhoja. All these kings were versed in Sanskrit literature, and were likewise authors of new works. At present no Sanskrit or Prakrit work by Vikramaditya is to be found. Some writers quote the Vikramaditya Kosha or Dictionary; but he cannot be the Vikramaditya of Ujjayini, founder of the era, but a modern prince of that name. The Vikramaditya mentioned by the author of *Jyotirvidabharana* was not a man of great learning, but was a patron of learned men :—

"धन्वंतरिक्षपणकामरसिंहशंकुवेतालभट्टघटखर्परकालिदासाः ।
ख्यातोवराहमिहिरोनृपतेः सभायां रत्नानि वै वररुचिर्नव विक्रमस्य ॥"

This account is not to be trusted; because, from what Dr. Bhau Daji* says, Varahamihira lived in the fifth century after Christ, and died in 509 A. C. He cannot, therefore, have been contemporary with Vikrama. Many *Jaina* writers speak of Vikrama's bravery and generosity. And it is also stated† that a learned Jain named Siddhasena Divakara and Kalidas were his contemporaries.

Of Salivahana, the second learned prince named by Hemachandra, I will speak further on.

Munja is understood to be the uncle‡ of *Raja* Bhoja, and the author of *Munja-prati-desa-Vyavastha.* He is described as living in the 9th and 10th centuries of the Christian era§, and to have been appointed regent during the minority of Raja Bhoja‖. But this will require careful examination.

Bhoja is the author of (1) a commentary on the *Yoga-sutras* of Patanjali; (2) *Asvayurveda,* a treatise on horses; (3) *Vidvanmanohara,* an astrological treatise; and (4) *Sarasvati-Kanthabharana,* a work on rhetoric. A work on grammar by Bhoja also exists in a private library in the Dekkan, the catalogue of which has been obligingly

* See *Jour. Bom. B. R. As. Soc.* vol. VIII. p, 241.

† See प्रबन्धचिन्तामणि and other works.

‡ *As. Res.* vol. XIV. p. 75; *id.* vol. VIII. p. 268.

§ *Id.* vol. XVII. p. 282.

‖ *Id.* vol. IX. p. 167.

placed at my disposal, but the MS. has not yet come to my hands. Aphorisms from this grammar are quoted by various authors.*

A Sanskrita writer says :—

धातर्भ्रातरशेषयाचकजने वैरायसे सर्वथा
यस्माद्विक्रमशालिवाहनमहीभृन्मुंजभोजादयः ।
अत्यंतं चिरजीविनो न विहितास्ते विश्वजीवातवो
मार्कंडध्रुवलोमशप्रभृतयः सृष्टाहि दीर्घायुषः ॥

Translation :—" O brother, Brahma ; you are altogether inimical, to the begging men, because while you have not made Vikrama Salivahana, Munja, Bhoja, and other kings very long-lived, you have created Markanda, Dhruva, Lomasa, and others very long-lived. "

The fourth learned king named by Hemachandra is Salivahana, also called Satavahana. That lexicographer also styles him *Hala* which may be a corrupt form of Sala. Some Prakrita authors have styled him Valahana.† There are various *Jaina* accounts which claim him to be a convert to their faith. Of that, however, we may speak further on. These Jaina accounts of Salivahana are now the principal source of information about the life and times of this prince, whose name and era are so common amongst all ranks of the Hindus of Maharashtra. As I said before, he is the third of the *saka-kartas* or era-makers (as now popularly received) of the ordinary Hindu calendar. There is a life of Salivahana in Marathi, written evidently on the basis of local tradition. Of *Jaina* authors, giving some account of him, there are many. Of these, I give an abstract of one of the best.

In *Kalpapradipa*, a Jain work by Jinaprabhasuri, who composed many works about the middle of the 14th century of the Samvat era, the author writes about many places sacred to his co-religionists. Thus he, amongst others, describes Pratishthana or Paithana, and in

* See, amongst others, the *Vaidika-nighanta bhashya*. Also *Siddhanta-kaumudi* : अत्र भोजः दलिवलिस्खलिराणिध्वानित्वापिक्षपयश्चेति पपाठ ॥ Calc. Ed. vol. II. p. 85.

† *Sa* and *Sa* are vulgarly turned into *ha* in *Gujarat* and other provinces.

connection with it mentions the king Satavahana, of whom he gives some account. This narrative is long; of which the following is an abstract:—Saluting Suvrata Jina,* he describes Pratishthana as he had heard it described. In the southern half of Bharatavarsha†, an ornament to Maharashtra, is the beautiful city of Pratishthana. Although it once vied with the capital of India in splendour, time has changed it into a poor trifling village. There lived in it some foreign Brahmanas in the house of a potter, with their young widowed sister. They used to beg for food-corn, and to bring it to their sister, who cooked it for them. One day their sister went to the bank of the Godavari to fetch water, when Sesha‡, the Naga-king, viewing her attractive person, assumed the human form, and, coming out of his watery house, had connection with her against her will. Although by age incapable of conception, the divine power of Sesha made her a mother. Sesha, discovering to her who he was, told her that whenever she was in distress she should remember him. He then went back to his home in *Patala*, and the widow also returned to her home. Shame prevented her disclosing to her brothers the adventure that had befallen her. After sometime had elapsed, her brothers concluded from her physical condition that she was with child; and the elder brother suspected the younger of the intrigue, while the younger had the like suspicions of his senior brother. Afterwards both abandoned their sister, and went to different countries, while she remained in the same city, gaining her livelihood by doing service in several families. At the proper time she gave birth to a boy endowed with all good signs. Her son grew in age as well as in good qualities; and whenever he played with his companions he used to become the king, and to give his play-fellows horses, elephants, carriages, and other artificial conveyances. *Jinaprabhasuri* says:—"सनोतेर्दानार्थत्वात् लोकैः सातवाह नइतिव्यपदेशं लंभितः" *i. e.* "The people called him Satavahana, because (the verb) *sanoti* signifies 'to give.'" [And hence he by whom were (*i. e.* [*dattani*]) *satani*§ given (*vahanani i. e.*) conveyances, was called Satavahana]. The story

* One of the Tirthankaras.

† India.

‡ The king of *Patala*, or the serpent-region.

§ षणु (उ) दाने ॥ The above is a form of this verb of the eighth class.

which follows the above narrative is also to be found in the Marathi legendary work *Salivahana-charitra*, to which allusion has been made in the beginning of this paper, and which is therefore omitted here. At the end, the king Vikrama being defeated by Satavahana, fled to Ujjayini. Satavahana was afterwards installed king, and the city Pratishthana became a rich city, having wide roads, large temples and private dwellings, brilliantly white markets, fortifications, and ditches; and Satavahana having made all the people of the *Dakshina-patha* * free from debt, and conquered the country as far as the Tapi introduced his era therein. He afterwards became a Jain. He built Jaina *chaityas* or temples, which refreshed the eyes of the people Fifty of his *Viras* (or Sardars) built Jaina temples, after their respective names. Here the episode respecting Pratishthana comes to an end. The author then recounts the remains of other traditions respecting the life of Satavahana. This account is the same as that given in the *Chaturvinsatiprabandha* of Rajasekhara. Therein it appears that there was a powerful Brahmana minister named Sudraka with Satavahana, who once recovered the wife of Satavahana, who had been carried away; and further that there were fifty warriors living without, and fifty within the city of Pratishthana at the time of Satavahana. On the occasion Satavahana lifted up a stone of the size of fifty-two cubits, along with fifty of his officers. Some lifted it an inch, others two inches, while the king lifted it up to his knees. Although Sudraka was then only twelve years of age, he threw up the stone into the skies, and, in falling, it split up into three pieces. One piece fell to a distance of twelve *kos* or twenty-four miles; the second fell into that pool of the *Godavari* at Paithana called Nagarhada [*i. e.* the pool of serpents]; the third is still to be seen at a crossing where four roads meet. Seeing this feat of extraordinary strength, the king invested him with authority. The king's officers only permitted his wielding a stick, but he was not allowed to carry any other weapon. But even with that stick he used to prevent the Sirdars residing outside the city from coming within its limits, for he feared a disturbance if they came within.

Satavahana's end was thus brought about. He became desirous of sexual enjoyment, and every fourth day he married a new virgin

* Country to the south.

from one of the four classes. This went on for some time, when the people became enraged, and a Brahmana of the village named Vivahavatika prayed to the goddess Pithajà stating that the king's practice came in the way of their children's marriage. The goddess said that she would become his daughter, and when asked by the king he should bestow her on him, when she would chastise him. Accordingly, when the marriage was being performed, and the cloth between the pair was removed, she assumed the form of a fiend and pursued the king, who fled before her, until coming to the Naga-rhada pool, he there jumped in and was drowned. After some time the minister Sudraka also died. The account runs thus :—" ततः शक्तिकुमारो राज्येभिषिक्तः सातवाहनायनिः ॥ तदनन्तर अद्यापि राजा न कश्चित् प्रतिष्ठाने प्रविशति वीरक्षेत्र इति, *i. e.* "Thereafter the son Saktikumara was enthroned king, (and called) Satavahanayani. After him there has been no king at Pratishthana, the city of heroes."

The conclusion of the story is characteristic of a sectarian writer :—

अत्र च यदसंभाव्यं तत्र परसमय एव मं-
तव्यो हेतुः यन्नासङ्गतवाग्जनो जैनः ॥

" Whatever is improbable herein is caused by the writings (or Shastras) of others; for a *Jaina* is not given to inconsistent (or dishonest) speech."

The same author—Jinaprabhasuri—has written another chapter of the city of Pratishthana, from which I give the following extracts :—

जीयाज्जैत्रं पत्तनं पूतमेतद्गोदावर्या श्रीपतिष्ठानसंज्ञं ।
रत्वापीडं श्रीमहाराष्ट्रलक्ष्म्या रम्यं हर्म्यैर्नेत्रशैत्यैश्च चैत्यैः ॥१ ॥
अष्टा षष्टि र्लौकिका अत्र तीर्था द्वापंचाशज्जज्ञिरे चात्र विराः ।
पृथ्वीशानां न प्रवेशोत्र वीरक्षेत्रत्वेन प्रौढतेजोरवीणां ॥ २ ॥
नश्यतीति पुटभेदनतोस्मात् षष्टियोजनमितः किल वर्त्म ।
बोधनाय भृगुकच्छमगच्छद्वाजितो जिनपतिः कमठाङ्कः ॥ ३ ॥

अन्वितत्रिनवतेर्नवशत्या अत्ययेत्र शरदां जिनमोक्षात् ।
कालको व्यधित वार्शिकमार्यः पर्वभाद्रपदशुक्लचतुर्थ्याम् ॥ ४ ॥
तत्तदायतनपंक्तिवीक्षणादत्र मुञ्चति जनो विचक्षणः ।
तत्क्षणासुरविमानधोरणीश्रीविलोकविषयं कुतूहलं ॥ ५ ॥
शातवाहनपुरःसरानृपाश्चित्रकारिचरिता इहाभवन् ॥
दैवतैर्बहुविधैरधिष्ठिते चात्र सत्रसदनान्यनेकशः ॥ ६ ॥
कपिलात्रेयबृहस्पति पंचाला इह महीभृदुपरोधात् ।
न्यस्तस्वचतुर्लक्षग्रंथार्थं श्लोकमेकमप्रथयन् ॥ ७ ॥
(सचायं श्लोकः) ऋीर्णे भोजनमात्रेयः कपिलः प्राणिनोदया ।
बृहस्पतिरविश्वासः पंचालस्त्रीषु मार्दवम् ॥ ८ ॥

Translation :—" May the city of Pratisthana, on the Godavari, pure and fit for the subduer of enemies, flourish ;

A city which is the jewelled head-ornament of the glory of Maharash tra : and which is beautified by pleasure-giving palaces and *chaityas*, cooling to the eyes. (1.)

Wherein exist sixty-eight sacred, popular places, and wherein fifty-two heroes were born, and which is consequently called the city of heroes ; and

Wherein the [other] kings of the earth, glorious like the sun, cannot effect entrance therein. (2.)

[Fearing] that his religious faith may be destroyed,

The *Jain* king went on horse-back to preach it at Bhrigu *Kachha* (probably Broach), a city 220 *kosa* distant from this city. (3.)

Nine hundred and ninety-three years after the death of the *Jain* (king) in this city,

The Arya [named] Kalaka established an annual festival on the 4th of the bright half of the month of Bhadrapada. (4)

And intelligent persons, having seen the line of temples of gods in this city, gave up their desire of witnessing the beauty of the line of heavenly cars [called *vimans*] of the gods. (5.)

In this city flourished Satavahan and other kings of singular celebrity,

And there were likewise Annasatras or houses for the distribution of food in this city containing many deities. (6)

And in consequence of being troubled by the king, [the authors] Kapila, Atreya, Brihaspati, and Panchala published one *sloka* or verse containing the drift of their four lakhas of verses. (7).

(This is the *sloka*.) When food is digested, says Atreya, dinner [should be taken] ; Kapila [enjoins] compassion towards animals ; Brihaspati counsels distrust, and Panchala, softness towards the female sex. (8.)"

From the *Prabandhachintamani* and *Chaturvinsatiprabandha* it appears that, with the aid of *Panditas*, Salivahana composed 400,000 *gathas* or *Prakrit* verses, and denominated it the *kosha* or treasury of *gathas*. And this seems probable, for Banabhatta writes as follows, at the beginning of *Harashacharitra* :—

अविनाशिनमग्राम्यमकरोत्सातवाहनः ।
विशुद्धजातिभिः कोशं रत्नैरिव सुभाषितैः ॥

Translation :—Satavahana made the (*gatha*)-*kosha*, indestructible and faultless.* The *kosha* (was made) of good verses of approved metres like precious stones†.

Banabhatta lived 1200 years ago.

Of the *gatha-kosha* I have succeeded in obtaining from a Basseen Brahmana a portion containing seven hundred verses in the Maharashtri form of the Prakrit. It is entitled the *Salivahana-Saptasati*, the seven hundred verses of Salivahana. The copy is about a hundred years old. This is a very old work, of an age which may be taken to be contemporaneous with Salivahana. The language is Maharashtri-Prakrit, which requires a commentary to understand it properly. The

* Free from vulgarisms.

† This verse is also capable of another interpretation,

Marathi is evidently derived from this form of Prakrit. I append a table of words gathered from the above work:—

	महाराष्ट्री प्राकृत Maharashtri-Prakrita.	मराठी. Marathi.	English.
(1)	अत्ता.	आते.	Father's sister.
(2)	झुरई.	झुरत्ये.	Grieves.
(3)	पाव.	पाव.	Attain.
(4)	ओट्ठो.	ओंठ.	Lip.
(5)	तुज्झ.	तुझें.	Thrine.
(6)	मज्झ.	माझें.	Mine.
(7)	सिप्पि.	शिंपि.	Shell.
(8)	पिक्कं.	पिकलेलें.	Ripe.
(9)	पाडि.	पाडी.	A female calf.
(10)	चिक्खिल्लो.	चिखल.	Mud.
(11)	फलई.	फाडितो.	Tears.
(12)	छल्ली.	साल.	Bark.
(13)	पोट्टं.	पोट.	Stomach.
(14)	सोणार.	सोनार.	Goldsmith.
(15)	रूंदो.	रुंद.	Wide.
(16)	तुप्पं.	तूप.	Ghee or clarified butter.
(17)	मंजरम्.	मांजर.	Cat.
(18)	जुण्णं.	जुनें.	Old.
(19)	ओल्लं.	ओलें.	Wet.
(20)	चुक्कं.	चुकी.	Mistake.
(21)	बोड (vulgar बोडियो).	मुलगा.	Boy.
(22)	भोंडी.	डुकरीण.	A female pig.

All these words are current in Maharashtra, and they point to the age of this work, and also help us to understand the changes which have taken place in the Marathi language. The oldest Marathi poet whose works are extant is Mukundraj, who belongs to the end of the 12th and the beginning of the 13th century. His successor Dnyanesvara wrote his celebrated commentary on the *Bhagavatgita* in Sake 1272 or A. C. 1350. Now the difference between the Marathi

of Dnyanesvara and the present Marathi, and that between the Maharashtri-Prakrit of *Salivahana-Saptasati* and Dnyanesvara's Marathi, is so great that we may safely conclude that more than twice the period must have elapsed between the composition of the *Salivahana-Saptasati* and that of the *Dnyanesvari* that has elapsed since the latter was written. I do not say that the present Marathi is a pure daughter of the Maharashtri Prakrit, in which the *Salivahana-Saptasati* is composed; but I believe it mainly is so; and the time that has certainly passed in the bringing about of certain known changes in the Marathi language is a fair index for judging the age of prior lingual formations from which the Marathi has evidently drawn largely in its construction.*

There are seven hundered and odd *gathas* or verses in the above work, divided into seven chapters called *satakas* or hundreds; and at the end of each chapter is a verse like this :—

रसिअजणहिअअ दइए कइवच्छल पमूह सूकइ णिम्मविए ।
सत्तसतम्मि समत्तं पढमं गाहासअं एअम् ॥

Translation :—Thus ends this first hunderd of the *gathas* out of the *sapta-satam* (*i.e.* the seven hundred) made by the chiefs of the great poets headed by *Kavivatsala*†, charming the hearts of the appreciative people.

This work is evidently by Salivahana, living on the banks of the Godavari; for that river is often named, and some description in reference to it occurs here and there. Of mountains, the Vindhya is herein noticed. Verse 64 of the fifth hundred is in praise of Vikramaditya, and the 67th of the same hundred is in praise of Salivahana; both of these must be by some one of the six poets other than Salivahana. Although it is called *Salivahana-saptasati*, it has not been composed

* In the 4th *sataka*, 8th verse, there is a reference to *Buddha* and *Bhikshu sangha*, words chiefly in use amongst the Bauddhas; and they point to the remote periods at which this work must have been composed.

† This is the name of Satavahana, as appears from verse 3 of the first hundred.

by Salivahana alone, because I understand from the commentator's notes that the following poets also contributed to the work :—

1. Bodissa ;
2. Chulluha ;
3. Amararaja ;
4. Kumarila ;*
5. Makarandasena ;
6. Sriraja ; and lastly comes
7. Salivahana.

This poem is a collection of *Prakrit* songs, abounding in ironical expressions and love-sentiments.

Although the *Jainas* claim Salivahana as one of their own, he does not seem to be so. In the *Mangala* or introductory verse, the *Pasupati* or Siva is distinctly referred to, and a prayer addressed in his honour, which would not have been the case if the prince were a *Jaina*.

In the first *lambaka* (or section) of the *Kathasaritasagara* of Bhattasomesvara, a king named Satavahana and his dependent Gunadhya-kavi are mentioned, and a long account is given about them ; but that Satavahana is evidently quite different from the Satavahana, the founder of the era and author of the *Saptasati*, the subject of this paper. Except this work by Salivahana, I think that a very old work by a king in the Prakrit language is not to be found.

There is an old Sanskrit and Prakrit drama by Sudraka, a king, entitled the *Mritchakati* or the Toy-cart ; but its age has not, I think, been yet well determined.

The Satavahana mentioned by the *Brihatkatha* must have been a contemporary of Nanda, while the Satavahana or the Salivahana of some of the Jaina writers (see the fourth verse in the above extract) would be living at about 466 A.C., or in the 388th year of the Salivahana era. The Salivahana, author of the *gatha-saptasati*, can be neither the one nor the other, as he is the prince of Pratishthana, whose current era is now in its 1795th year. Some writers appear to me to be confounding this Salivahana with the Vikramaditya

* This is evidently a different Kumarila from the contemporary of Sankaracharya, of that name.

Sakari; but the same works (like the *saptasati*) refer to two princes; and both eras are still current within their respective spheres. The universal and continued practice of Maharashtra, supported by uniform tradition, inclines me to the belief that Salivahana was quite distinct from Vikramaditya Sakari, who reigned at Ujjayini 135 years before the advent of Salivahana.

SANGAMESVARA MAHATMYA AND LINGA WORSHIP

[*Read February 13th, 1875*].

Sangamesvara is the principal town of the Taluka of that name in the District of Southern Konkana, in the Bombay Presidency. It is situated at the junction of the rivers Sastri and Sonavi. Its latitude is 17°9′ N., and longitude 73°36′ E. It is one of the principal places noted in such portions of the *Sahyadri Khanda*, a part of the *Skanda Purana*, as are now accessible. The *Sangamesvara Mahatmya*, which I present to the Society to-day, is stated to have been composed by a poet named Sesha, in the service of one of the Chalukya kings named Karna. It consists of ninety *slokas* or verses—the last five of which have been extracted from the *Sahyadri Khanda*. The copy with which I have been favoured by my friend Mr. Vishnu Moresvara Kelkar, the Subordinate Judge of Sangamesvara, was made in Sake 1713, and is therefore 83 years old. The language is simple, like that of other Puranas, and this and other circumstances which I shall state presently, seem to show that this town is one of some considerable antiquity. The poem begins by citing the genealogy of the founder of Sangamesvara. It is as follows:—

(1) Seshaputra (शेषपुत्र), who began to reign in the Saka year 10.
(2) Saktikumaraka (शक्तिकुमारक), who regined 25 years.
(3) Sinhaka Mudrika (सिंहकमुद्रिक), „ 12 „
(4) Indu-Kiriti „ 18 „
(5) Brahma to Chaluki „ 38 „

The last-named in this poem is Karna, who became king in S. 100. He came from Karavira or Kolhapura, along with his brothers,

Naga and Singhana. Kolhapura itself was not their original seat; but their previous residence and capital are not given in the extract before me. He then built a number of temples in addition to those which had been established by Rama at this place; and he built a fortress for his residence, and his brothers built their own palaces and constructed their quarters of the city. To the principal temple which he built, and named after himself—Karnesvara—he assigned nine villages:—(1) Dharmapura, (2) Gunavallika, (3) Devanimuchaka, (4) Sivani, (5) Lavala, (6) Phanas, (7) Dhamani, (8) Kadamba, and (9) Antravalli. The village of Katuki was assigned to Somesvara temple, and the village Turiya was granted to the temples of Kedara and Somesa together. Most of these places can be directly or remotely identified. The poem, like other similar works, describes the virtues and religious efficacy of the several holy spots in Sangamesvara, and concludes by mentioning that the king Karna who founded the temple of Karnesvara at this place was the same as the king who built the temple of Mahalakshmi at Kolhapura. We are also told that all the temples existing previously to the time of Karna were of the time of Raghava or Rama. And the ancient name of the place is given as Ramakshetra. The extract from the *Sahyadri Khanda* at the end of the *Sangamesvara Mahatmya* is as follows:—

"(85.) The slokas therein are the following:—

"As the delightful Kasi, Prayaga, Pushkara, Prabhasa, Naimisha Kshetra, Chakra Pushkarani are celebrated, so is this great city named Sangama. There are ten holy places established by Rama. Among the ten, six are superior; the names of which hear from me:—Gokarna, Saptakotisa, Kunakesa, Sangama, Harihara, and Tryambakesa. There are six holy places. Kuddalesa (Kudal?), Dhutapapa, Dalbhesa (Dabhol), Vardhana (Srivardhana?), and the great god Ramesvara. These are the five holy places. Even Bhargava Rama by his devotion founded the *lingas* at Sangamesvara in the vicinity of Siva." (86-89.) These are the *slokas* in the *Sahyadri Khanda* The preceding *slokas* are the prinaipal ones describing Sangamesvara composed by Sesha, and forming part of a work named *Karnasudhanidhi*.

There is evident confusion here between Bhargava Rama and Raghava Ram in a previous part of the poem. But this seems to me to confirm the Pouranik origin of the narrative, written from a simple religious point of view, regardless of time. If, according to the gradation of the Pouranik *avatars*, we ascend from Rama to Bhargava Rama, the antiquity of the spot becomes all the greater.

At Sangamesvara there is a temple of Sangamesvara pointed out, and that shrine is stated to be older than that of Karnesvara founded by the Chalukya king, Karna. This older shrine is referred to Parasurama, the reputed reclaimer of the Konkana* country along the western coast of India. There are remains of old temples at and about the town, which point to a remote period. The only inscription to be found is inside the temple of Karnesvara, on a wall, an impression of which I produce before the Society to-day. It has been taken by an intelligent clerk of my own, whom I had deputed on purpose to that and other places, in connection with some work before me on account of this Society, at my own expense.

Mr. Vishnu Moreshvara sends me the following version by a gentleman at Sangamesvara, made with some local knowledge:—

गद्यगो ११

दाम ४ ॥ थचेदम

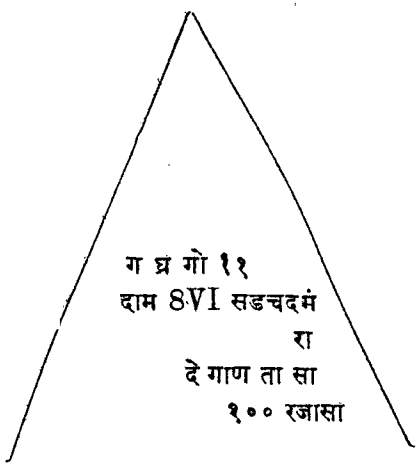
देवोध्मताराा

१०० द्वजदप

* Includes all that strip of land between the Sahyadri range and the sea up to and inclusive of Malabar.

But I confess that there is little or no evidence before me to support this reading of the few lines that are now very nearly obliterated.

It seems, however, that a similar reading was adopted by the late Sivarama Bhaskar Kane, Sub-Deputy Educational Inspector of Ratanagiri, in his Marathi account of that collectorate published in A.C. 1872, and of which the following is a *facsimile*:—



The reference to Kolhapura in the poem naturally led me to further inquiries; and I obtained from a friend at Kolhapura the following verses, which form part of an inscription on the temple of Mahalakshmi:—

याते श्रीमति शालिवाहनशके त्रिंश ३० न्मिते भूपतिः कर्णः कर्णसमानदानकुशलश्चालुक्यभूपादभूत्। यो भूत्वानुजनागसिंघणमहीपाभ्यां भुजाभ्यां चतुर्बाहुर्भूमिमजीजयत् खलु चतुः पाथोधिपाथोवृतम् ॥ १ ॥ तेनायं द्रविणाचलं खलुवणिक्कृत्वाऽखिलक्ष्मातलश्रीदः श्रीनिलयो महान् विरचितो यंत्राकृतिस्त्वीकृतिः। किंचैतादृश एव कोंकणगतश्रीसंगमेशाभिधक्षेत्रे स्वाभिधया समर्चितमहालिंगस्य देवालयः ॥ २ ॥ सोथ ध्वंसितगर्वपर्वतमहीपालानुयातः सतः संश्रुत्याखिलभूमिमंडल इदं सद्यो मलक्षालनं। क्षेत्रं श्रीकरवीर मत्र कमलालीला गृहे कांश्चन नीत्वा वत्सरकानगादथ

वशीकर्तुं पुनः कोंकणम् ॥ ३ ॥ श्रीसंगमेश्वरक्षेत्रे श्रीमत्कर्णेश्वरालये लिखित्वा स्थापितं तत्र पद्यत्रयमिदम् ॥

Translation :—"When thirty years of the Salivahana era had passed the Chalukya king named Karna, generous like *the* Karna*, flourished. He, by the help of his younger brothers Naga and Singhana, who were his two additional hands, becoming four-handed, really conquered the earth surrounded by the four oceans (1).

"By him mountains of money being spent, the great temple of the goddess, which is an ornament to the whole world, and which is in the form of a *Sriyantra* and of a beautiful shape, was constructed. And by him also a similar temple dedicated to the great *Linga*, and consecrated after his own name, was built at Sri Sangamesvara town in the Konkana (2).

"He, followed by the kings of the earth (whose pride had been destroyed), having heard that in the whole world this place would immediately wash away sins, and which city of *Karavira* was a place where the goddess of wealth delighted to play, spent several years there, and went again to subdue the Konkana (3)."

These three *slokas* have been inscribed on the temple of Karnesvara in the city of Sangamesvara.

These verses have not been found on the walls of the present Karnesvara temple. But the moist climate and excessive rainfall of the Southern Konkana would fully account for the different states of inscriptions, even contemporaneous, on both sides of the Ghats.

About the *Kolhapura* temple I hope to write on a future occasion, if I receive ample materials which have been promised to me. Meanwhile I would refer to pp. 479 and 480 of the *Statistical Report on Kolhapura*†. This inscription distinctly refers to Sangamesvara and King Karna of the Chalukya dynasty. He is described as being

---

* One of the heroes of the *Mahabharata*.

† Selections from the Records of the Bombay Government No. VIII., New Series : *Statistical Report on the Principality of Kolhapura*, Compiled by Major D. C. Graham, of the 28th Regt. Bombay N. I. Political Superintendent at Kolhapura : 1854.

succeeded by Nrisinha, Vetugideva, Somesvara, and Somadra—the last of whom gave the village of Kumbhargam to the temple of Mahalakshmi, which grant is set forth in the above inscription. There is no date to the inscription as given by Major Graham, and in his Summary at pages 334 and 335 the column of dates is blank. The king who succeeded Karna deva is said to have had his capital at "Vijayaput"* (as it is there designated), and this must, I think, be the same as Juyunugur or Jayanagar at p. 314 of the same work. If so, it takes us, according to Major Graham, to A.C. 789. In Brown's *Carnatic Chronology*† the Chalukya era begins with A.C. 1016. The two branches of the Chalukyas are there described, one reigning at Kalyana in the Western Karnataka, and other ruling Kalinga. But the names given in my account of Sangamesvara are not mentioned by Mr. Brown.

Major (now Major-General Sir) George LeGrand Jacob gives Chalukya grants from Kudal Desa near Goa, of the 6th and 7th centuries of the Christian era‡. The same learned writer notes in the next volume§ a Chalukya grant of Tervana, a village near Rajapura, about fifty miles to the south-west of Sangamesvara, of the year A.C. 1261.

The late Professor Bal Gangadhar Shastri gives notice‖ of a Chalukya grant of the year A.C. 733; and he seems to hold¶ that the power of the Chalukyas had then (at least temporarily) declined. This grant refers to a place near Puna. Another referred to in the same paper is described as of the 5th century of the Christian era.

The list of Chalukyas given by Mr. Wathen (*Jour. R. As. Soc.*, No. VII., pp. 1—41) is said to tally with those which Dr. Bhau reported upon in his paper to this Society, read in November 1870.

* *Statistical Account of Kolhapur*, by Major Graham (above quoted), p. 479.

† *Carnatic Chronology*, by C. P. Brown, M.R.A.S., Madras Civil Service; Lond. 1863, p. 37.

‡ *Jour. B. Br. R. As. Soc.*, vol, III., p. 203.

§ *Jour. B. Br. R. As. Soc.*, vol. VI., p. 98.

‖ *Jour. B. Br. R. As. Soc.*, vol. II., p. 1.

¶ *Ibid.* p. 2.

Kolhapura is mentioned as a tributary state of the Chalukyas by Mr. Wathen; and more than one prince of the name Somesvara or Soma occurs in his account of the Chalukyas of the 10th or 11th centuries.

In his *Survey of Indian Chronology* (see Vol. VIII. of this Society's Journal, p. 250), Dr. Bhau Daji puts the dates of the previous Chalukya grants till then published as ranging from Sake 411 downwards. It seems to me, however, from the scanty notices of the Chalukyas in Nelson's *Madura Manual** that a great deal of light will yet be thrown on the history not only of the Chalukyas, but on the spread of *Linga*-worship and the progress of Saivism, by the publication and translation of all the Tamil works which date many centuries before the Christian era.

How the Chalukyas prospered, and brought with them a more elaborate form of *linga*-worship, can be completely illustrated by researches into the history of the South of India and connecting it with that of Western India, for Malabar and Canara form a part of the Konkana, which once extended far into the southern portion of Gujarat.

This country is said to have been recovered from the sea by Parasurama—who was then standing at Gokarna† (as some would hold), or at Sangamesvara, which at one time was called Ramakshetra. And if the last portions of the *Sahyadri Khanda* could be recovered, they would throw additional light on the subject. The Rev. Mr. Taylor speaks of a manuscript of *Parasuramavijayam*, the publication of which would doubtless give some help in the same direction.

Parasurama was evidently no ordinary person. He is connected with the passage of the Brahmaputra into Assam ‡ in the east and colonizing the western coast of India §. And yet on the establishment of what is understood in those parts as the oldest Brahmanical

---

* Part III., pp. 63, 65, 75.

† A *Hand-book of Hindu Mythology*, By the Rev. W. M. Taylor: Madras 1870 (2nd ed.), pp. 86-88.

‡ *As. Res.*, vol. xiv., p. 382.

§ *Ibid.*, p. 376, and note.

seat, we find the first shrines consecrated are dedicated to the *linga* of Siva. It is remarkable that the *trimurti* or triad at the present town of Parasurama, near Chipluna, to the north-east of Sangamesvara, where there are now three images of Vishnu, is also known to have been a *linga*-shrine set up by a *Paramahansa* Go-avi, who afterwards removed to the village of Dhavads, near Satara. On the site of the present three images there once stood three *lingas*. The images now consecrated are :—*Kalakama*, *Parasurama* and *Bhargavarama*. This must have been at least two hundred years ago. All the oldest temples at Sangamesvara are *linga* temples ; and the style of the Karnesvara temple may be judged from some *facsimiles* of architectural ornaments which I now produce. The late Dr. Bhau's Pandit Bhagvanlal refers them to a date anterior to the 8th century of the Christian era.

From evidence which is available, the worship of Vishnu had been made considerable progress in this part of the country long before this period. In a comparatively poor mountainous village, six miles from Dapuli, I met with a beautiful image of Vishnu, brought evidently from the north, bearing the date Sri Saka 1127; and I am satisfied that a careful search will bring to light further facts and materials.

Chalukya traditions near Sangamesvara trace an off-shoot of the race down to about the 15th century of the Christian era ; and families with the surname of Chalke or Chalake are known even now in different parts of the Maratha country. *Linga*-worship appears to have clearly become a national institution amongst all classes in Western India prior to the 7th century of the Christian era, if not in the 2nd century of that of Salivahana. Except in connection with Kolhapura, I have not yet succeeded in identifying the Chalukyas named in the *Sangamesvara Mahatmya* with the princes mentioned by other writers. But as materials are gathered together, that work could some day, I have no doubt, be more easily accomplished.

Translation of 'Sangamesvara Mahatmya' or 'the Greatness of Sangamesvara.'

Salutation to Ganesa. Now for Sangamesvara Kshetra Mahatmya, composed by Sesha. Now, in this 10th year of the Salivahana Saka

at its close, there lived a king [named] Seshaputra [or the son of the auspicious Se-ha], whose countenance was like the moon, and who was like the sun. From him was born a certain king named Sakti Kumaraka, who was very powerful and was the cause of the whole world's delight for 25 years. (1.) After him came King Sinhaka Mudrika, devoted to the Brahmanas; he reigned 12 years. After him King Indu Kiriti reigned 18 years. From him [came his sons] beginning with Brahma and ending with Chaluki, having glorified and honoured the Brahmanas for 34 years, departed all the heaven. (2.) King Chaluki was the most powerful of all kings. He had three sons, who were in lustre like the three fires.* (3.) The first was by name Karna, the second was Naga, and the third Singhana, and they all set out in the southern direction. (4.) Having exacted tribute (on the way) they reached Karavira (Kolhapura). Having stayed there for some time, they thought of leaving it. (5.) They came to Rama Kshetra, graced by the sea, crowded by Brahmanas of various classes, and adorned by various trees. (6.) Having conquered the country up to Gokarna, and the sea up to the river Gautami, they returned; (7.) and having visited Rama, they all set out; on the road they turned into another path. (8.) And there beholding Kedara, facing the south, a very sacred hot spring giving immediate proof (of its character), (9.) they stayed there three days and (Karna) saw a dream, the giver of everything. In that dream he saw Visvesvara with Elma. (10.) Near him was an exceedingly delightful mountain in the form of Siva (or Lingam), and the great lovely goddess Bhuvanesvari. (11.) Situated in a great forest and flowing from the eastern part of the mountain was a sacred, beautiful and quietly-flowing river, the waters of which he saw were clear and hot in the middle. (12.) He also saw, on the top of the mountain, the venerable Rishi Galava, doing penance near Mahadeva from fear of [the goddess] Jyeshtha. (13.) Thence, four miles distant, he saw now on the summit of a mountain the beautiful Saptesa and Vaijanatha worshipped by numbers of Rishis. (14.) Issuing from the summit of the tangled hair of the Saptesa, Ganga, taking the northerly direction, flowed on the lower ground-

---

* The three sacrificial fires are:—Garhapatya, Dakshina, and Ahavaniya.

(15.) From the eastern part arose the Gautama-Tirtha. On the western part also [appeared] the fair Kolesvari. (16.) Sangamesvara stood at the junction of Varuna and Alakananda. [He also saw] other holy places like the Dhutapapa [or remover of sin]. (17.) On the north Naganatha, and Siva under the name of Nibandhesa, then on the east Kedara, facing the south. (18.) In the middle of the river, the sacred hot spring giving comfort to all beings; thence on the western side, also Tilabhandesvara. (19.) In that Sangamesvara [there] was the well known, celebrated Parvati; so [was] the superior god Ganesa, the giver of the eight preternatural faculties, intelligence, and desires. (20.) From thence, on the western side, there was Gomukhesvaraka, then Svarnavati Ganga, where there were three great goddess Durga. (21.) Thus, the king Karna saw a holy place in his dream. Then the king awoke and comprehended at the same moment the meaning of everything. (22.) He then resolved on making it his happy capital, and in the morning invited an astrologer of the Sandilya family, who was an inhabitant of Sri Sangamesvara Kshetra, who was an austere and pious man, versed in the science of astronomy, and named Nrisinha. (23 and 24) Having duly honoured him with fruits and jewels, the King joyously asked him the propitious time. When the propitious time with propitious conjunction of stars and the support of the planets was mentioned by the astrologer, King Karna, having duly worshipped Kurma, Sesha, Varaha, &c, established his capital there. (25, 26.) Nagapura was founded by Naga and Singhana by Singha. Then, abandoning Karavira, they lived here many years. (27.) Karna made Sangamesvara altogether like the Kshetra (*i. e.* Karavira), and founded the principal *linga* after his own name. (28.) Having spent a crore of gold pieces, that great-minded king built 360 temples there. (29.) I will briefly mention the names of some of them. On the east, Bramhesa, graced by five (surrounding) gods; (30.) the great god Karnesa, surrounded by ten other gods, and who is celebrated in Sangama kshetra, and is the giver of the means of subsistence and salvation. (31.) On the river-side, Girijesa (or the lord of Girija), and thereafter Kumbhesvara; the great goddess Ekavira accompanied by 64 *ganas*. (32.) Ravanesa, near the Ganga, who is Sankara himself. It was a *linga* founded by Ravana, which Karna repaired. (33.) There also was Varana-Tirtha, the destroyer of all sin, by bathing in and drinking of which, a mortal

attains salvation. (34.) Then there was Bhandapuranesa, surrounded by five Narayanas; also Mahakalesvara and Kopanatha. (35.) In the middle of the city, Nagaresa, giver of the means of subsistence and salvation, by seeing whom only, a mortal can become sinless. (36.) Then the god Somesvara, the seat of the god of the universe; then the great god Amritesa, and next Pantajesa. (37.) Then Khadgesvara, and Nandikesa, surrounded by water. There was Kalabahirao for the protection of the Kshetra. (38.) Facing the south, he was served by Siddhas and Gandharvas. By looking at him, living in the Kshetra becomes safe. (39.) He who diligently worships him with the *banian* (*ficus indica*), fig (*ficus glomerata*), and other trees would obtain his desires. (40.) He who bathes in and drinks of the tirtha near Bhairava-Bramhesvara attains Bramhaloka. (41.) On its west is the great renowned tirtha, Dnyanavapi, by the drink of which men on earth become acquainted with the *Brahama*. (42.) Then the goddess Vindhyadrivasini next Bramhakshetra, where formerly austere penance was performed by the seven Rishis. (43.) Then the fourteen steps together with Vishnu, where the manes desirous of salvation always dwell. (44.) By offering funeral balls there, one should reap the fruit of performing the *sraddha* at Gaya. Then the Vaitarani tirtha, giver of strength to the virtue of a chaste woman; (45.) By bathing in it and drinking of it one does not see the region of Yama [or Pluto]. There also by giving cows, one attains heaven. (46.) Thence to the north is situated the perpetual banian tree known as Akshayya Vata (*imperishable*), (*ficus indica*), under which giving funeral oblations to the manes leads them to beatitude. (47.) Thus a great holy place of this description was founded by King Karna; then he built a pleasant city named Sangama. (48.) and placed on the eastern side Bharavas endued with bliss, Wastoshpatis (*i.e.* guardians), Kirt mukhas, a class of demons. (49.) The Bharava at the door was the King's giver of gifts. The extent of this holy place was undoubtelly five kosa. (50.) By bathing and heaping gifts there the manes of ancestors attain heavenly bliss. By worshipping Somesvara always, a sonless man obtains a son. (51.) He who worships Saptesa does not become subject to disease. By the worship of Vaijanatha a man shall always become successful. (52.) On the south-east is a burning-ground leading to heaven for the deliverance of the manes of ancestors. On the west from Satragananatha *is* the

Svarnavahini. (53.) On the north [is] the village Turvari, so on the south [is] Saptesa. This holy place of five kosa in extent is the giver of the means of subsistance and salvation. (54.) Around this are eight well-known habitations of this Sakti (goddess), and eight tirthas in the eight quarters of this holy place. (55.) In the east [is] the Kamalaya tirtha, always presided over by Kamala. By bathing and giving at that *tirtha*, a man becomes wealthy. (56.) There also is the Goshpada-*tirtha*, the destroyer of all sickness; even now a beautiful *linga* is visible in the Goshpada-tirtha. (57.) In the south-east is the Gautama-tirtha, founded by Gautama, by bathing and giving at which a man is delivered from all sins. (58.) In the south lies the *agastya*-tirtha, inhabited by multitudes of Rishis, where, by bathing and drinking, [sins such as] the killing of a Brahmana, &c. are destroyed. (59.) In the south-west is the Ekavirakhya-tirtha, with a class of heavenly beings called Siddhas. By drinking of it, injury from infernal beings immediately ceases. (60.) In the west, there where the rivers Varuna and Svarna unite, is the tirtha Varuna, visited by Siddhas and Gandharvas, crowded by various classes of Rishis, and adorned by various trees. By bathing and drinking there no danger from water arises. (61, 62.) In the north-west is the Gananatha, ever fond of drinking milk. No doubt, by worshipping him even an idiot shall become a Pandit. (63.) There is a very pure and sacred tirtha named Ganesa, by the drinking of which the dumbness of men vanishes. (64.) In the north is the great superior tirtha Mallarika, where dwells the venerable Siva, the destroyer of Malla, and the giver of all desired objects. (65.) By bathing there, a person is liberated from all diseases. That mortal who on a Sunday would, with devotion, worship Mallari in company of Parvati with powdered turmeric, fruit, flowers and meal shall meet with all success difficult even for the gods to obtain. (66, 67.) In the north-east is the great goddess Mahishasuramardini, (destroyer of Mahishasura). By worshipping her feet, danger from an enemy immediately disappears. (68.) There also is the very pure and holy tirtha Gauri. By bathing in and drinking its water men shall gain health quickly. (69.) At these eight holy places, offering funeral cakes and oblations, bathing, giving, meditating, and sacrificing, all shall become everlasting. (70.) That king had a great fortress in the east occupied by several warriors and possessed of various riches. (71.) The king

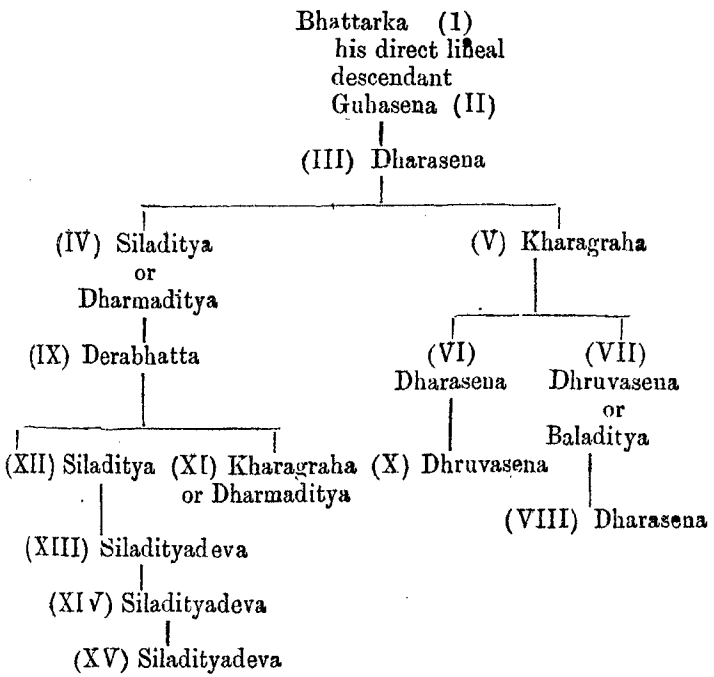
granted nine villages to the Karnesa for maintenance [of the establishment] of Dharmapur for charitable purposes; Gunavallika for betelnuts, Devanimichaka village for refreshment, Sivani for ghee, Lavala for meals, Phanas for fruits, Dhamani for a charitable ferry, Kadamba and Antravallika for the god's servants. (72, 74.) He granted the whole Katuki village to Somesa, and the village Turiya to Kedara and Somesa jointly. (75.) The powerful King Karna founded Ramakshetra in the year 100 of the Salivahana era. (76.) In his kingdom there is no poverty, no separation of friends, no sonless person, none diseased, none foolish. (77.) In this *Kshetra* the Brahmanas are versed in all kinds of knowledge, passessed of all qualities, skilled in the 64 arts, and rich in penance. (78.) In this *Kshetra* that wicked mortal who lives disrespectfully, even losing his merit, becomes poor instantly. (79.) In this *Kshetra*, inhabited by gods and Brahmanas, he who enjoys the company of the good cannot but reach the presence of Siva. (80.) He who built the temple of Mahalakshmi at Karavira (Kolhapur), the same built the temple of Karnesa here. (81.) When the temple was completed, the noble-minded king paid ten thousand pieces of gold to the master-builder. (82.) At the palace of that king there also lives a master-poet of the name of Sesha, who composed this for the delight of that gentle and abstemious king. (83.) Somesha and other *lingas* seen in the dream by the king were all formerly established by Raghava. (84.) The greatness of these lingas is also described at length in the *Sahyadri Khanda* by the venerable Vyasa. (85.) The *slokas* therein are the following:—As the delightful Kasi, Prayaga, Pushkara, Prabhasa, Nimisha Kshetra, Chakra-Pushkarani are celebrated, so is this great city named Sangama. There are ten holy places established by Rama. Among the ten, six are superior; the names of which hear from me:—Gokarna, Saptakotesa, Kunakesa, Sangama, Harihara, and Tryambakesa. There are six holy places:—Kuddalesa (Kudal?), Dhutapapa, Dalabhesa (Dabhol), Vardhana (Shrivardhana?), and the great god Rameśvara. There are the five holy places. Even Bhargava Rama, by his devotion founded the *lingas* at Sangamesvara in the vicinity of Siva. (86-89.) These are the *slokas* in the *Sahyadri Khanda*. The preceding *slokas* are the principal ones describing Sangamesvara, composed by Sesha, and forming part of a work named *Karnasudhanidhi*.

THREE WALABHI COPPER-PLATES, WITH REMARKS.

[*Read April 10th, 1875.*]

I PRESENT the Society to-day with facsimilies, transcripts, and translations of three Walabhi copper-plate grants.

Two of these were received from Captain Phillips, Assistant Political Agent in charge of the Gondala State in Kathiawad (or, more popularly, 'Kattywar'). Both refer to the same king. I describe them as A and B. Both are grants by the fifteenth (XV*.) king Siladitya, and are later in date than all the other Walabhi plates hitherto published. The kings here described are as follows :—



* The numbers given in the above table represent the order of names in these plates, and not the proper succession of the whole of Walabhi kings.

The names of the kings occur in these plates in the order noted by the Roman figures written above. The fifth (V), Kharagraha, is stated in both to be the *suta* (or son) of Siladitya Dharmaditya; but other copper-plates hitherto found describe him as *anuja* (or younger brother). After (No. VIII) Dharasena, while describing the descendants of (IV) Siladitya or Dharmaditya, he (the said Siladitya) is stated to be the brother of Dharasena's grandfather; and Kharagraha (V) is also described in terms which make him out to be the brother of Siladitya; so that *anuja* (or brother) would be the correct reading, and not *suta* (or son).

(No. VI) Dharasena is styled in Plate B as Dhruvasena; but in Plate A he is styled Dharasena; and the latter seems to be the correct designation, as being borne out by other plates hitherto discovered.

(No. IX) Derabhatta is stated in other plates as *angajanma*, or son born of his body; but in both A and B he is styled *agrajanma*, which may be his elder brother; the latter seems to be a mistake.

From No. XII Siladitya all the subsequent princes up to XV are styled Siladityadeva, but there is nothing else to distinguish them,—an unusual circumstance, which may perhaps be explained by other plates hereafter.

The fifteenth (XV) Siladitya is the grantor of both A and B Of these, A is dated Samvat 403 (of the Walabhi plates), Magha Bahul* 12th; and grants to Damodara Bhuti's son, Wasudeva Bhuti, Chaturvedi, an emigrant from Wardhamana district (*i. e.* now Wadhawana Pranta) and living in Liptikhanda, of the Gargyas *gotra* of the Rig-Veda section, the village of Antarpillika, near Dinnaputra, in Saurashtra. B is also a grant to the above individual of the village of Khandajja, near Uasingha†, in Saurashtra, dated Samvat 403, Vaisakha Suddha, 13th.

---

* *i. e.* dark half of the month of Magha.

† On the Uasingha hill there is a fort of the late (Hindu) period some of the stones whereof appear to have belonged to Jain or Buddhist, buildings found on the north side of the fort walls in a mound, which, as well as its neighbourhood, requires to be carefully surveyed.

Captain Phillips writes that these were found at Dhanka, a place of some note in Kattywar. It is under Gondala (?). It is now a moderate-sized village. There are other places in its neighbourhood noted for antiquarian remains, worthy of being inquired into.

The third copper-plate (C) of which I present a facsimile, transcript, and translation to-day came from Thakore Raul Sri Megharajji, Chief of Wala, a third-class chief in Kattywar, who forwarded it to the Honourable James Gibbs, our President, by whom it was placed in my hands. Wala, sometimes called Walen by the people, is described in papers about two centuries old as वळेह or वलहे *i.e.* 'Waleh or Walahe,' a corruption of Walahi of the Jain *prakrita* authors, and the Walabhi of Sanskrit writers. Colonel Tod was the first English writer who identified this place with the Walabhi of the ancients.

C consists of two copper-plates forming together one grant (or *danapatra*), slightly spoilt by time, but, except the last corner of the first plate and a portion of the beginning of the second (which have been altogether destroyed by corrosion), the rest of the plates can nearly all be read pretty easily,

This grant contains the following enumeration of the Walabhi kings :—

Sri Bhatarka,
[A lineal descendent of his] Guhasena,
his son Dharasena,
his son Siladitya or Dharmaditya.

The last named is the grantor. Siladitya made the grant in the 286th year of the era current in Walabhi plates, on the 6th of the dark half of the month of Jyeshtha. Its object was to support the Bhikshus (by providing them with food, bedding and seats) ; for the service of the sick ; and for medicines and provisions, and for flowers and oil for lamps for the god (Buddha) of a Vihara (the name of the Vihara is obliterated) in Walabhi, and for the repairs, &c. of the Vihara itself. The following places are given by this grant, viz. :—

[The village of] Pandharakupika (?) in the precincts [probably Pargana of] Pushyanaka-sthali, [in the village of] Uchchapadraka, [in the possession of] one Suryaka, one field ; and another field in the

possession of [name obliterated] ; in the village of Karkajja ; one *wapi* [probably a measure of land which could be watered by one well] in the possession of Ardhaha, and one *wapi* in the possession of one Kambhaka [or *ra* (?)]. in the village of Indranipadraha ; a field in the possession of [name obliterated] ; on the confines of Walabhi ; a flower-garden, and *kupakas* or wells. Thus a village with three fields, two *wapis*, a flower-garden, and four wells, were bestowed.

Wapi here probably signifies a piece of land watered by a *wapi* or well, and the fields are those cultivated by rain-water : this inference is supported by the present state of things in Kattywar, where these two kinds of fields exist. And the four wells must have been in the flower-garden.

Along with the last plate, the Thakore sent also two earthen seals and some coins, on which I have to make very brief remarks.

The two seals are made of earth baked : one appears brown, and the other black.

The inscriptions are alike. The legend thereon is the Bauddha *mantra* so often met with in five lines :—

येधर्म्महेतुप्र-
भवा हेतुं तेषां तथा-
गतो ह्यवदत्तेषां च
यो निरोध एवं वादी
महाश्रमणः

This occurs on the pedestals of Bauddha images met with in different parts of India, and also on seals found in *stupas* (or topes). The Bauddhas of Nepal use this *mantra* at the present day in worshipping the image of Buddha with parched rice; and it also occurs at the end of all the irworks. This *mantra* is not found in Bauddha writings prior to the fourth century of the Christian era, and also from the form of the letters on the seals it seems to be later than the end of the fourth century.

In some Nepal works the mantra line 2 reads, insted of हेतुं तेषां, हेतुस्तेषां ; but the former is the form more frequent.

These seals are in a character later than that of the *Walabhi* plates, as may be seen from the formation of the letters य, ष, भ Comparing them with the plates, the seals may be of the seventh century of the Christian era, or somewhat later; and it seems, therefore, that at that time the city of Walabhi was the capital of a kingdom, and the religion then current there was that of Buddha.*

Dr. Buhler, in the *Indian Antiquary*, mentions a similar seal, the legend of which he there quotes partially. The third word there should, I think, be *Prabhava* instead of *Pravhava*.

Of the coins :—

Four are silver, commonly called *gadhayas*, of very impure metal. These are corruptions by the later Hindu dynasties of the Sassanian coins; and the present are some of the worst specimens of these corrupted forms. On one side is a human face almost undistinguishable by an unpractised eye. On the other is a bad form of the fire-altar. The ornaments which occur about the face on better specimens are here mere dots. The five copper pice are of the later periods of the Muhammadan rulers.

Translation of the Walabhi Copper-plate Grant.

GONDALA A,

Plate First

[May] Prosperity [attend] !

From the great Saiva Sri Bhattarka† [who] resided in the city named Srikhetaka, the abode of success;

Who had achieved success in hundreds of battles occurring in the wide extent of territories of *Maitrakas*‡, who were endowed with incomparable courage and who had forcibly reduced their enemies to submission;

who had gained the affections of those whom he had conquered by bravery, by means of gifts, honours, and candour:

---

* Vol. I., p. 130.

† Sometimes termed Bhatarkka and Bhatarka in other plates.

‡ Seems to be a race of the later Kshatrapa warriors.

who has obtained the glory of a king through the power of his devoted army [of three kinds], termed *maula**, [*i. e.* hereditary soldiers], *bhrita* [*i. e.* receiving pay for service done], and *sreni* [*i. e.* men employed in *thanas* or posts].

From the unbroken kingly line descending from him [the said Bhattarka], [came] the great Mahesvara [*i. e. Saiva*] Guhasena,—

who had washed away all sins by submission to the commands of his parents;

whose sword even was his second arm from childhood, and whose strength had been tested in defeating hordes of ruttish elephants of his enemies;

the light of the nails of whose feet commingles with the rays of jewellery set in the diadems of enemies reduced [to submission] by his arms;

who, by truly following the rules of all the *Smritis*, and by gladdening the hearts of his subjects, has [in his own person] realized the real meaning of the word Raja†;

who by his beauty, his magnificence, his steadiness, his depth, his intellect, and his riches has excelled *Smara*‡, the moon§, the king of mountains¶, the sea, Jupiter‖, and *Kubera*$.

---

* See *Nitisara*, or the elements of Polity, by Kamandaka, edited by Babu Rajendralal Mitra, Calcutta, 1861, p. 118, "मौलं भूतं श्रेणिसुहृद्द्विषदाटविकबलं" ch. xviii., v. 4. This gives six kinds of forces. In other plates *surhidah* or friends are accounted a species of force; that is, the expression runs thus:—"अनुरक्तमौलभूतमित्रश्रेणि" &c. These terms are also defined in the *Nitimayukha* of Nilkantha, whose interpretations I have adopted.

† The word *Raja* means one who shines (from *raj* to shine).

‡ See *Amarakosa*, bk. I., ch. i., v. 20. The god of love: at Ellora in the great Kailasa cave (in the compound wall) the god *Kama* is represented as embracing *Rati*, the goddess of love, and bearing in his hand a bow made of sugarcane.

§ The moon gladdens people's hearts.

¶ Meru, the highest mountain, according to the Pouranika cosmogony

‖ Brihaspati, the preceptor of the gods. He is the god of talent.

$ The treasurer of the gods: dwells in Kailasa, and is represented as the friend of Siva.

possessed of the quality of giving safety or fearlessness to those who submitted to him, he treated in his own aims and the results of his own action [so far as concerned himself] as grass [or as of no consequence];

he who, by bestowing more wealth than was used for, had gladdened the hearts of the learned, the relatives, the friendly;

who, like the traveller who walks, delights in the expanse of the whole circle of the universe;

the great Maheśvara Śrī Guhasena.

His son [was Śridharasena],

who had washed away all his sins in the rays proceeding from the nails of his [father's] feet—that being (as it were) the flow of the wide Jahnavi;

one whose riches—supporting hundreds of thousands of the friendly—and whose beauty induced the [*abhigamaka* or kingly qualities* themselves to approach him [*i. e.* his protection] rapturously;

---

* These आभिगामिक qualities are thus laid down in the *Nitisara* of Kamandaka [Calcutta ed., p. 78]:—

"कुलं सत्वं वयः शीलं दाक्षिण्यं क्षिप्रकारिता। असंविवादिता सत्यं वृद्धसेवा कृतज्ञता ॥ ६ ॥ दैवसम्पन्नता बुद्धिरक्षुद्रापरिचारिता। शक्यसामन्तता चैव तथा च दृढभक्तिता ॥ ७ ॥ दीर्घदर्शित्वमुत्साहः शुचिता स्थूललक्ष्यता। विनीतता धार्मिकता गुणाः साध्याभिगामिकाः ॥ ८ ॥

Ch. iv, vv. 6—8; the gloss at p. 163 runs thus:—

श्लोकत्रयेण अभिगामिकगुणानभिधातुमाह। कुलमिति। 'कुलं' उभयकुलविशुद्धिराभिजात्यं, 'सत्वं' व्यसनेऽभ्युदये चाविकारता, 'वयः' यौवनं, 'शीलं' सुस्वभावता 'दाक्षिण्यं' सर्वत्र सानुकम्पत्वं, 'क्षिप्रकारिता' अदीर्घसूत्रत्वं '*अविसंवादिता' वक्छलेन विरुद्धसंवादरहितत्वं, 'सत्यं' अमृषावादः 'वृद्धसेवा' विद्यावृद्धाराधनतत्परता, 'कृतज्ञता' कृतस्य प्रत्युपकारतत्परता। 'दैवसम्पन्नता' यद्यदिच्छति तत् सम्पद्यते यस्य स दैवसम्पन्नस्तस्य भावः, 'बुद्धिः' अष्टगुणा प्रज्ञा, 'अक्षुद्रपरिवारता' † अक्षुद्रजनपरिजनत्वं, 'शक्यसामन्तता' शक्या वशीकर्तुं सामन्ताः संसक्तमण्डलमर्यादाभूम्यन्तरा अरयो यस्य तद्भावः, 'दृढभक्तिता,' स्थिरानुरागत्वं, प्रतिपन्निर्व्यूढिरित्यर्थः। 'दीर्घदर्शित्वं' दीर्घदेशेन दीर्घकालेन च व्यवहितं प्रज्ञाचक्षुषा द्रष्टुं शीलं यस्यतद्भावः 'उत्साहः' शौर्यादिगुणसंयुक्तता, 'शुचिता'

whose innate strength and acquired education specially astonished all wielders of the bow;

protector of the old *Dharmadaya* [*i. e.* religious] grants of former sovereigns;

the destroyer of evils oppressing [his] subjects;

one showing [in himself] the combination of *Lakshmi* [*i.e.* riches] and *Sarasvati* [*i. e.* learning];*

whose power in enjoying [or preserving] the wealth gained from enemies overthrown [was] noted;

whose pure kingly wealth was gained by valour;

this was the great Mahesvara Sridharasena.

His son [was Sri Siladitya];

who worshipping at his [father's] feet, has occupied the whole firmament by the aggregate of remarkable qualities causing joy to the whole world;

whose shoulder is beautified by the brilliancy of the sword which has been crowned with success on hundreds of battle fields; who bears the great weight of serious [state] projects;

refined in intellect by a study of all the † sciences, spiritual as well as temporal, and yet capable of receiving pleasure from even a grain of fine talk;

the seriousness of whose mind is unapproachable by all, and yet whose virtuous conduct clearly discloses a very beneficent disposition;

who was acquired great fame by an investigation of the ways of all the kings in the *Krita* age;

परदारादिनिरीहा, 'स्थूललक्ष्यता' स्थूललक्ष्यादिस्थः स्थूलमेव लक्ष्यं संडूख्यादिभिः करोति न कृशं स्वल्पं इत्यर्थः, 'विनीतता' विनयः; 'धार्मिकता' धर्मनिष्ठता, एते 'गुणाः', 'साध्याभिगामिकाः' संश्रयणीयत्वकारकाः, अनायासेन बहुभिराश्रिता भवन्तीत्यर्थः ॥ ६ ॥ ७ ॥ ८ ॥

* This is considered an unusual combination.

† These are laid down as पर and अपर. See also *Mundakopanishada*, Khanda, 2. 5:—

"तत्रापराऋग्वेदो यजुर्व्वेदः सामवेदोऽथर्व्ववेदः शिक्षाकल्पो व्याकरणं निरुक्तं छन्दो ज्योतिषमिति। अथ परा यया तदक्षरमधिगम्यते."

Calcutta ed. 1850, pp. 266-69.

who, by following the paths of virtue (or *Dharma*) obtained enjoyment of the purest wealth and happiness, and thus gained for himself the truly significant second name *Dharmaditya** :

[This was] the great Mahesvara Sri Siladitya.

His son (?) [should be his younger brother]† the worshipper of his feet ;

whose courage was not shaken by either joy or sorrow, in bearing on his shoulders, as the well-disciplined bullock does carry [the yoke], the much-to-be coveted kingly wealth with which he was invested‡ [by his brother who] behaved towards him with the same respect as Indra did towards [his younger brother] Upendra§ : for his soul was devoted to simple obedience ;

Although his footstool was covered by the lustre of jewels set in the diadems of hundreds of kings subdued by his prowess, still the bent of his mind was not affected by pride which would hurt the self-respect of others ;

whose enemies, though celebrated, powerful, and proud, had left off all means of opposing him, save the one of submission ;

the collection of whose pure qualities has gladdened the whole world ;

who, by his power, has destroyed the entire manifestation of the force of *Kali* ;

whose mind was most exalted because it was not tainted by all the sins which occupy the thoughts of the wicked ;

whose exceeding bravery and excellence in wielding arms were famous ;

who, having obtained the wealth of many opposing kings, had raised himself to the first rank amongst the brave and powerful ancient sovereigns ;

this was the great Mahesvara Kharagraha.

---

* The son of *Dharma* or virtue.

† Other plates give it as अनुज, and it also agrees with the context.

‡ The original is *asaktam*, but it should be read as *asanjitam*.

§ From this it clearly appears that Siladitya resigned in his brother's favour, and seated him on the throne during his lifetime ; and he gave his whole wealth to his obedient brother.

His son, who was a worshipper at his feet ;

who intensely delighted the hearts of all the learned by acquiring all knowledge ;

who, by his power and generosity, when his enemies were off their guard, had broken the axle of the moral and mental chariot of his opponents ;

who, although acquainted with the deepest portions of many sciences, arts, and popular annals [or biography], was yet of a very pleasant disposition ;

who, being artlessly gentle, whose gentleness became his ornament ;

who, by taking the flags after success on hundreds of battle-fields, has destroyed by his famous arms the rise of pride of all his enemies ;

whose command is accepted by the whole circle of kings, whose pride as warriors has been destroyed by his own bow ;

This was the great Mahesvara Sridharasena.

His younger brother, the worshipper at his feet ; whose virtues excelled those of all former kings ; who by his valour acquired countries which were very hard to obtain ;

the very impersonification of manliness ;

whose subjects came to him—like Manu—of themselves, being inspired thereto by love for his high qualities, which had filled their hearts ;

invested with [knowledge of] all arts and sciences ; brilliant causing comfort, like the moon, and yet whose splendour is not obscured [like that of the moon] : he is like the moon himself* ;

whose ample glory has destroyed the vast darkness [of ignorance] in the vast expanse of the heavens like the sun—[unlike whom] he is shining at all times ;

versed in even both sciences of Polity and Grammar, creating [in reference to Policy] in his subject the greatest confidence which was full of purpose, which was the source of very many objects, and which

* Like other words, this is a figure of speech ; thus *Kala* means arts, &c., when applied to the king, and phases when used in connection with the moon.

was replete with the acquisition of wealth*; skilled [in reference to Polity] in determining upon making peace, war, and encampment; [skilled—the same applied in reference to Grammar—in determining the *Sandhis*, *Vigrahas*, and *Samasas*] ;

giving [in reference to polity] command [to men] according to rank; [causing—in reference to Grammar—*adesas* (grammatical changes) in proper places] ; and who had used means to producing increase in the virtue of good people,—who [as applied to Grammar] has tried the modes of producing *guna* and *vriddhi*] ;

though of excessive valour, yet having a heart softened by compassion, possessed of learning, but free from pride;

quiet though handsome ; constant in friendship but the giver up of the guilty ; with the well-known second name Baladitya (morning-sun) which became significant, because by his rise [*i. e.* birth] the three worlds were cherished (delighted), and with whose radiance [and love] given [support] to the people.

the great *Mahesvara* Sri Dhruvasena ;

his son ; whose horned moon-like forehead was marked by a scar caused by its rubbing against the ground when falling at his [father's] lotus-like feet ;

whose ears were endowed with holy *Vedas*, graceful like the ornaments of pearls, in his very childhood ;—

the ends of whose lotus-like hands were wetted by water accompanying remarkable gifts ;

who sustained the amount of gladness of the earth by taking light taxes,† like softly taking the hand of a maiden ;

who like the Dhanurveda [or the science of archery] itself, was skilled in directing his bow to every object which was the object of his aim ;

---

* The same words being applied in reference to grammar, the clause would stand thus :—" Forming words by means of suffixes added on to bases, with *anubandhas* [indicatory letters or syllables marking some peculiarity in the inflexion of a word to which they are attached] that have various objects and are replete with *agamas* [augments] ;

† This is a play upon the word [*kara*], which means a tax as well as a hand.

whose command was obeyed like the jewels held at the best part of the body [the head] by a circle of all the suppliant tributary princes;

the paramount power, the great king of kings, the supreme lord, the monarch of the earth, [named] Sridharasena.

A, Second Plate.

[Then comes Sri Derabhatta.]

The son of Siladitya, the brother of his [Sridharasena's] grandfather, who [Sri Siladitya] was like Sarangapani [*i. e.* Vishnu], who had made obeisance by lowering his limbs through devotion [to Siladitya];

whose head was always kept shining by the exceedingly fair lustre of the gem-like nails of [his father's] feet, like the most fair Mandakini [*i. e.* Ganges];

who was a royal sage, like *Agastya**, scattering liberality;

whose circle of richly fair fame graced the horizon [literally the eight directions of the sky], and formed an entire and total halo round the lord of the night [moon] in the heavens;

who was the lord of the earth, whose [*i. e.* earth's] two breasts are the *Sahya* and *Vindhya* mountains, whose tops clothed in black clouds appear like [her] nipples;

[such was] Derabhatta†.

---

* This is a figure founded on the word *dakshinya*, which means living in the south, like the sage Agasti, and wisdom or generosity like that of a royal sage.

† The object of thus bringing in Derabhatta by circumlocution seems to be this:—The main line of kings terminates with Dharasena; and Siladitya, the brother of Kharagraha and father of Derabhatta, was not in the direct line of kings, but his son Derabhatta seems to have been an officer of note who had probably made excursions or conquests towards the Vindhya and Sahyadri ranges. But his son, Dhruvasena, again ascends the Walabhi *musnad*. All the copper-plates since the time of this Dhruvasena date from the camp Khetaka, and those prior to this Dharasena date from Walabhi. This Khetaka is probably the present Kheda or Kaira; and it seems to have formed a part of the Walabhi dominions. Since the time of this Dharasena, it seems that the Walabhi kings hereafter lived in Khetaka instead of Walabhi.

His son [was Dhruvasena] ;

who gave protection to a host of allied kings ;

wearing the cloth of their own pure fame, and offering him like a garland of flowers by a damsel at her own marriage, the sovereignty* of their kingdoms ;

who possessed valour which was irresistible, and which he held like a sword, subduing a formidable array of enemies ;

who duly effected taking possession of the countries of his enemies, the acquisition of which was made by force in winter [*i. e.* शरद्], by forcibly handling his bow and arrow† ;

and who has properly taken the taxes from those countries ;

whose ears, which had been already ornamented [by listening to lectures] conveying profound learning, were further beautified with ornaments made of precious stones ;

the ends of whose hands bore wristlets beautified by sparkling emeralds, [which looked] as it were made of young moss, luxuriant with the sprinkling of water accompanying uninterrupted gifts‡ ;

who had embraced the earth with arms forming the boundary line of the ocean made up of jewelled bracelets which he wore ;

the great Mahesvara—This was Sri Dhruvasena.

His elder brother [was Kharagraha] ;

whose body was marked by altogether unmistakable signs by Lakshmi herself in her embrace, as if with the sole object of getting rid of the sin [communicated by] the touch of other sovereigns ;

who had attracted all sovereigns [towards himself] by the greatness of his exceedingly graceful deeds ; who had joyfully gained over other kings by his great love [towards them] § ;

---

* The original word for the host of kings is संहति, which being in the feminine gender, the whole figure is founded thereon, and hence the example of *swayamvara*, or giving away in marriage by a damsel of her own person.

† The same countries are compared to beautiful daughters.

‡ This is a figure of speech : a gift by a Hindu is always confirmed by water poured by the hand of the giver on that of the receiver. And hence the introduction of moss which grows in watery places.

§ This is nearly a repetition, and does not occur in B.

who has burnt out by his valour the race of all his enemies ;

who gave all his wealth [Lakshmi] to the company of his friends [unlike Vishnu] ;

who wielded no disease [or distress] ;

who never left the company of the true sciences ;

who played no sports of childhood ;

who despised no twice-born ;

who won the earth by valour alone ;*

who did not sleep among or keep company with the dullards ;

who being an extraordinarily excellent person, like Dharma himself, properly regulated the practices of the different orders of the classes of the people ;

whose family was glorified by the standard of his excellent spotless virtue, being lauded and raised by the three worlds, which were much delighted by his freeing and confirming with his highly frank disposition even those grants to gods and Brahmanas which had been spoliated by former kings of the earth, who had been incited by a shade of greed ;

who, having duly honoured the gods, the twice-born, and his preceptor, permanently introduced new grants†, was yet unsatisfied, and the series of whose famous deeds filled the cardinal points of the heavens ;

this was Kharagraha, the great Mahesvara, whose second name was Dharmaditya, which is but plain and truly significant.

Of his elder brother ‡ [Siladitya] who enlightened all the regions of the world by his fame, which was just like the light of the moon unfolding the beauty of a host of lotuses ;

who was lord of the Earth, whose heavy breasts were the black Vindhya mountains, like a ball of the unguent made of the black powdered aloe ;

---

* Many of the adjectives here used are applicable to the god Vishnu.

† The word in the original is *udranga* ; the meaning of this has not yet been properly settled ; it seems, however, to be something which accompanied gifts of towns, because in nearly all plates the grants are given along with *udrangas*, and therefore must be some old coin of those days.

‡ This was also not in the line of kings, and must therefore have been a *subedar* of the country about the Vindhya range.

and whose name was Sri Siladitya, whose son was Sri Siladitya-deva, who was like the new moon, increasing every day his stock of knowledge;

who graced the splendour of royalty, as the young lion graces the mountain forest;

who, like the god *Kartikeya**, was crowned with a diadem, and who was possessed of formidable power;

who was full of glory, like the sultry *Sarad* season, and whose wealth was in full bloom, like lotuses in the *Sarad* season;†

slaying the cloud-like [big] elephants of his enemies;

who, like the morning sun, destroyed in battles the lives of the enemies in front;

who was a great votary of Siva, a great monarch, a great lord, and the great king of kings devoted to the feet of Sri Bava‡, who was a great king, a great lord, and the great king of kings.

His son [was Siladitya];

who by his prowess in delivering the great world, which was sinking under the weight of the waves of the agitated sea of *Kali*, manifested his being an extraordinarily excellent individual;

who thus was, as it were, a second philosopher's stone, accomplishing the desires of all people;

---

* The words in the original have two senses, one applicable to the king, and the other to the god *Kartikeya*.

† Here also is a play on words.

‡ Elsewhere described as बप्प. He seems to be some great teacher of the Saiva faith, or some remarkable great king of that name, but more probably the former, from the adjectives used. In Pandit Bhagavanlal's collection of Nepal inscriptions of about this time, all the kings are described as worshippers of the feet of Bappa.

बप्पपादानुध्यात : In vol. XI., of *Madras Journal of Literature and Science*, pp. 301-306, there is a note on an ancient Hindu grant of the time of Maharaja Sri Vijayanandi Varma, in which this same expression occurs in this modified form:—" स्वति विजयवेङ्गीपुराद्भगवच्चिनुरस्वामिपादानुध्यातो-बप्पभट्टारकपादभक्तः परमभागवत " &c., which confirms our supposition that *Bappa* Bhattaraka must have been some *dharmacharya* or sage venerated equally in all parts of Hindustan at that time.

who, on the occasion of making gifts, treated the earth, bounded by the four seas, as insignificant like grass, and who by his attempts to create other countries [literally to create another world] made for himself a name like that of another creator;

who made a place for himself in the world, surrounded by a wall of fire of his shining fame, spread by reason of his having destroyed the temples of the enemy's elephants by a stroke of his sword drawn through anger;

whose royal umbrella was hidden by the ceiling of his fame, fair like a ball of froth issuing from the milky ocean by the churning of the *Mandara* mountain, and which [ceiling] was upheld by his mighty arms and spread over the whole extent of earth;

such was Sri Siladityadeva, a great votary of Siva, devoted to the feet of the great king, the mighty lord, the great king of kings, Sri Bappa;

this was the great monarch, the great lord, and the great king of kings [Sri Siladityadeva].

His son [was Siladitya]; whose lotus-like feet were set and adorned* by the rays issuing from the gems of the crowns of all the tributary princes who lay prostrate [at his feet] by his valour and love;

[this] was Sri Siladitvadeva, a great votary of Siva, devoted to the feet of the great king, the mighty lord, the great king of kings, Sri Bappa; this was the great monarch, the great lord, and the great king of kings [Sri Siladityadeva];

commands all:

Be it known to you all; each and all thus:—"for the increase of the merit and fame of my father and mother and myself, for the acquisition of the fruit of this and of the next world, is given out of charity by me, confirming the gift by pouring of water, to Bhatta Vasudeva Bhuti, the son of Bhatta Damodara Bhuti, who, leaving Sri *Vardhamana*† *Bhukti*‡, has taken up his residence in Liptikhanda;

---

* This seems superfluous.

† Probably Wadhawana.

‡ Taluka (?)

who is familiar with the four sciences,* of the Gargya's *Gotra*, a student of the *Bahvricha Shakha*;

for the performance of *bali* [*i. e.* worship], *charu* [*i. e.* rice for sacrificial oblations], *vaisvadeva* [*i. e.* offering to all deities], *agnihotra* [*i. e.* sacrificial libations to the three fires], *kratu* [*i. e.* other sacrifices after the simple sacrifice to the fire], &c., the village of Antarpallika near Dinnaputra, in the Surashtra country, along with *udranga*, with all its appurtenant taxes, &c.;

with the *vetha* [*i. e.* right to exact labour];

along with भूतवातप्रत्यय †, with the profits in kind and cash [literally gold]:

with the jurisdiction to inquire into the (?) ten offences;

[the gift is] not to be interfered with by all government officers;

which was not given before either to gods or Brahmanas; which on the principle *Bhumichhidra*, is to continue as long as the moon, the sun, the ocean, the earth, rivers and mountains last;

which is to be enjoyed by the son, the grandson, and the descendants [of the donee];

therefore, while he, with the due limits of the rules of charitable gifts, enjoys it, ploughs it, or causes it to be ploughed, or parts with it, he should not be obstructed by any; either the future blessed kings or our heirs, or others, knowing that wealth is unsteady, human life is transitory, and that the reward of the gift of land is common [to all kings], this our gift should be acquiesced in and protected. It is said—The earth has been enjoyed by many kings, beginning with *Sagara*; when it is the territory of any one, the fruit [or gift] belongs to him.

What good person will possibly retake the wealth which is made the abode of charity by kings, from fear of poverty, which

---

* The four Vedas. There is a section among the Moda Brahmanas termed Chaturvedi, now corrupted to Chacharvedi.

† As yet untranslatable: the expression occurs in various shapes, thus: संभूतोपात्तप्रत्यय: संभूतवातप्रत्याय:, संवानभूतप्रत्याय:, sometimes we have प्रत्यय: instead of प्रत्याय :.

[wealth] is considered like *nirmalya* [*i. e.* flowers devoted to gods] or a thing vomited?

The grantor of land lives in heaven for sixty thousand years; its depriver, and the ratifier of such deprivation, shall dwell those years [sixty thousand] in hell. This [gift] is by the humble Agent [termed Dutaka] Siladitya.

This is written by Sri Gillaka, commander of the army, and son of Sri Buddha Bhata. Samvat 403, Magha Vadya 12.

My own hand.

Explanatory Note to Gondala Copper-Plate Grant B.

(*A*) In grant A, *line* 9, the passage is संहतारातिपक्षसमुत्क्षिप्तलक्ष्मी-परिभोगदक्षाविक्रमः, whereas in this it runs thus: संहतारातिपक्षलक्ष्मीपरि-भोगदक्षाविक्रमः. I think this reads better, and is thus translated: whose power in enjoying [or preserving] the wealth of his over-thrown enemies."

(*B*) *Line* 11. In grant A there is सच्चरितातिशयितसुव्यक्तपरमक-ल्याणस्वभावः whereas in B the passage is सुचरितातिशयसुव्यक्तपरमकल्याण-स्वभावः And this seems to be better than the other, and may be rendered thus:—"The excess of whose good deeds have made quite clear his very benevolent disposition."

(*C*) In A (*lines* 12 *and* 13) occur the words धर्मादित्यापरनाम, while in B the words are धर्मादित्यद्वितीयनामा. Both expressions, however, bear the same meaning [see translation].

(*D*) *Line* 21. The word ध्रुवसेन is clearly an error; for the same king in A is धरसेन, and that he is धरसेन, and not ध्रुवसेन, appears clearly from other copper-plates.

(*E*) *Line* 21. In A the corresponding passage runs thus: "सच्चरितातिशयितसकलपूर्वनरपतिः" whereas in B it is "सर्वविद्याधिगम [तिशयित]सकलपूर्वनरपतिः" which means, "who excels all former kings by the acquisition of all the sciences." In the above passage I have added [तिशयित], as it makes the sense more complete.

(*F*) *Lines* 27 *and* 28. In B, after the words धराणिकषण comes चनित, which does not occur in A, but the sense of both passages is exactly the same.

(*G*) *Line* 29. In B, after the words मृदुकरग्रहणादमन्दीकृतानन्द there is an evident omission of विधिर्वसुंधरायाः which occur in A. For without this addition there can be no comparison, and the sense would be incomplete. The meaning is that by the taking of light taxes he gladdened the earth; but, to bring this out, the words विधिर्वसुंधरायाः must be inserted.

(*H*) *Line* 8. In B the words are परिकलितसकलनरपतिः प्रसर्पत्पटीयः while in A the corresponding passage runs thus:—" परिकलितसकल-नरपतिप्रकृष्टानुरागसरभसवशीकृतनृपतिः " Therefore प्रसर्पत्पटीयः, meaning—"extended and very powerful" glory, &c., is an addition to B.

(*I*) *Line* 9. In B the word अपूर्वपुरुषोत्तमः occurs; whereas in A we have अपूर्वपुरुषोत्तमतयाः that is, in A we have the attribute, and in B the person.

Note on a Walabhi Copper-plate Grant from Wale, in Kathiawada.

Instead of a translation of the whole plate, which would, to a great extent, be a repetition of what comes in the translation of A for in these plates the adjectives applied to the different kings are, excepting some slight verbal changes, almost precisely the same—I propose to give below only those parts where this plate differs from the others, and also those where additional information, such as concerning the subject of the new grant, the grantee, &c., &c., is to be obtained, or further explanations appear to be necessary. Thus, in this plate, we have a Bhatarkka [Bhattarka]; and in his line we have Guhasena, his son Dharasena, his son Siladitya, otherwise called Dharmaditya. Their description in this plate is the same as in A, to which I beg to refer.

In the beginning of the plate, in line 1, the word *Walabhitah*, *i. e.* "from Walabhi," shows that this plate is from that city, and not from Khetaka, from which subsequently copper-plate grants like Gondala A and B, have been issued.

After this, upto line 17, first plate, the adjectives are similar to those in A, and any verbal differences are given in the marginal notes to the transcript. The following is a translation of the part from and after the words Sri Siladityah, in line 17, first plate :—

"The great votary of Siva, the prosperous Sri Siladitya, commands each and all, [such as] the *Ayuktakas*,* the *Viniyuktakas*,* *Mahattara*†, the *Chatabhatakas*‡, the *Kumaras* (*i. e.* princes) ministers, &c. ; and to others in their respective offices [commands]. Be it known to you all :—

Thus : For the increase of my parents' merits, in the environs of Walabhi, for multitudes of *Bhikshus* for giving them food, for their sleeping, sitting ; for serving the sick and giving them medicinal materials ; for giving perfumes, garlands of flowers, oil or lamps, &c., to the revered images of Buddha, and for repairing the broken parts of the *Vihara* (*i. e.* monastery), [is given] by me the village Pandarakupita, a field situate in Uchchapadra, in the Pushyanakasthali, held by the cultivator Suryaka ; also the field held by Kala*** [letters *l*ost] ; so also in Karkajja village a *Wapi* [a measure of land watered by one well] held by Ardhaka ; and also the *Wapi* held by one Kumbhara ; so also the field situated in Indrani Padraka held by..... ra ; also, a *pushpavatika*, [*i. e.* flower-garden] and four wells on the very borders of Walabhi. Thus the village, together with the three fields, the two *Wapis*, the *pushpavatika*, and the four wells, [is given] with *udranga* ; with all its appurtenant taxes, &c. ; with भूतवातप्रत्यय ; with the profits in kind and cash [literally gold] ; with the jurisdiction to inquire into the ten offences ; with the *vetha i. e.* right to exact labour ; [which] is not to be interfered with by all government officers.

From पूर्व्वप्रत्तदेवब्रह्मदेय, &c., in line 7, second plate, to तान्येव नरके वसेत्, in line 14 of the same plate, the passage is the same as in A and B, and is therefore omitted. After वसेत् in line 14, second plate the grant proceeds thus :—

"Here the Dutaka (agent ?) [is] Bhattaditya-yasahs ; this is written by *Divirapati* Chandrabhuti, the negotiator of peace and war ; Samvat 286, Jyeshtha Vadya [dark half] 6th. This is my hand."

* Some village officers (?).

† An officer is charge of a large division, or taluka (?).

‡ Police officers.

NOTES ON INSCRIPTIONS IN KACHH.

The following notes are summarized from a letter by the Honourable Rao Saheb V. N. Mandlik, C.S.I., to the Secretary to Government, General Department, dated 2nd April 1878, on the subject of certain inscriptions in Kachh, copies of which had been submitted to the Committee for remark.

The inscriptions in question are comparatively modern, and of little more than local interest. Abstracts of them are inserted here not for any intrinsic value they may possess, but in order to warn any intending inquirers in Kachh that there is little or nothing of special archæological interest within the scope of such cursory searches as those which resulted in the collection of the transcripts herein briefly described. With regard to the locality of *Narayan Sarovar* it is quite probable that extended or more systematic investigations might bring to light remains, relics, or indications of considerable interest. The only places that present any obvious antiquarian interest in Kachh are Kotesvar and Narayan Sarovar. Kotesvar suffered considerably in the great earth-quake in Kachh 1819, and most of the buildings situated there had either to be rebuilt or repaired (*Transactions of the Literary Society of Bombay*, Vol. III., reprint, pp. 97, 124, and *Lyell's Principles of Geology*, 11th edition, Vol. II., pp. 98-104.

Narayan Sar (Narayan Sarovar : 'lake of Narayan') is a place of pilgrimage sacred to Vishnu. In the *Bhagvat Purana* it is described as a sacred place on or near the mouth of the Indus, where the sons of Daxa used to resort for religious devotion (*Bhagvat Purana*, 6th *Skanda*, 5th *Adhyaya*, verses 2 and 3—*Narayan Sarovar Muhatmya* being part of the *Vishnu Purana*.)

The following abstract will suffice to indicate the nature of the inscriptions which have been referred to the Society for notice :—

No. 1. On the temple of Santinath at Kothara ; is quite modern, being dated Samvat 1918 (A. C. 1861). It comprises the

names of the then Rao of Kachh, H. H. Pragmalji, Mr. Keshavji Naik of Bombay, and Mr. Shivji Nensi of Kachh and Bombay.

No. 2. On the shrine of Trikamraya at Narayan Sar. Date Samvat 1790, Saka 1656. The shrine was built in the time of Maharaja Rao Sri Desalji.

No. 3. On the shrine of Sri Lakshmi at Narayan Sar. Built in Samvat 1797, Saka 1662, the reigning prince being Maharaja Rao Sri Desalji.

No. 4. On the shrine of Ranchodji at Narayan Sar, built in the same year as the above.

No. 5. On the shrine of Govardhananath at Narayan Sar, also dating from the same year.

No. 6. Also of the same date, on the shrine of Adya Narayan at Narayan Sar, built by Vaghelibai, the principal wife of Rao Sri Desalji.

No. 7. On the shrine of Lakshmi Narayan at Narayan Sar, built in Samvat 1790, by Vaghelibai Sri Mahakuvarbai, principal wife of Rao Sri Desalji.

No. 8. On the left side of the gate of the courtyard at Kotesvar. It records the construction of the walls and the granary of the temples of Sri Kotesvarji and Kalyanesvarji, together with the city hall, in Samvat 1878 (A.C. 1821).

No. 9. On the right side of the temple of Kotesvar. This inscription mentions the destruction of the temple of "the auspicious Kotesvar" by earthquake in Samvat 1875 (A.C. 1818), and its reconstruction, "under an inspiration from God," in Samvat 1877, during the reign of Rao Sri Desalji.

No. 10. On the left side of the temple of Kotesvar; also relates to the reconstruction of the temple mentioned in No. 9.

No. 11. On the marble slab in the middle of the floor of the *mandapa* of Kotesvar; bears the names Khatri Jetha and Sundaraji Sivaji.

No. 12. On the left side of the temple of Kalyanesvar at Kotesvar. This refers to the inauguration of the temple by Khatri Jetha and Sundaraji Sivaji in Samvat 1878, Saka 1743 (A. C. 1821).

No. 13. On a stone in the burying ground at Guntri, probably commemorative of a *sati*.

No. 14. On the left side of the temple of Avapura at Madha; records the completion of the temple, as well of another, dedicated to Siva, in Samvat 1880, Saka 1746 (A. C. 1821).

No. 15. On the left side of a tomb near Pipper, dated Samvat 1612.

No. 16. On the wall above the door on the eastern side of Modes Kuba at Gholai.

No. 17. On the wall of the temple of Kakhesvar at Vinjana; is (with the exception of No. 2) one of the oldest of these. It mentiones the commencement in Samvat 1688, Saka 1556 (A. C. 1631), during the reign of Rao Sri Bharmalji of that temple by a Bhatia merchant, Thakar Jeraj, and its completion in Samvat 1697.

No. 18. On the right side of the temple of Chaturbhuja Raya showing that it was built in Samvat 1776.

No. 19. On the jamb of the entrance of Dhoramanath's temple at Ryanu, dated Samvat 1665. Recites names of Bhikarinath and his disciples of the sect of Dhoramanath; and of Rao Bharmalji.

No. 20. On a marble pedestal in the shrine of Dhoramanath at Ryanu. Mentions the construction of a throne in the shrine by Pir Sri Sankarnath in Samvat 1916 (Saka 1781, A. C. 1859).

No. 21. On the *lintel* of the entrance of the Phulesvar's temple near Bagda. It records the rebuilding the temple in Samvat 1854 (A. C. 1797).

No. 22. On the well between Bagda and Wagori. It mentions the reconstruction of the well in Samvat 1891 (A. C. 1834).

No. 23. On the wall of the Jain temple of Vaspujaji at Sikra. The temple was built in Samvat 1773, Sake 1638 (A. C. 1716).

No. 24. On a *palia* at Sikra, bearing five incomplete, unintelligible lines Date Samvat 1060 (A. C. 1003).

No. 25-35. On the temples at Kanthakot. These are not correctly taken, but they are evidently important.

No. 36. On a pillar near the Sun temple at Kanthakot. The temple of the Sun is a novelty in India, for although worship of the

Sun is included in most of the cults in the country there are but few temples dedicated thereto.

No. 37. On a grooved lintel of the Malan Vao in the temple of Aehalesvar, Gedi. Refers to the repair of the Sabha mandapa in Samvat (1) 533, Saka (1) 398.

No. 38. On the right side of the wall of the temple of Lakshmi Narayan, Gedi, showing the temple to have been repaired in Samvat 1877, in the time of Rana Sri Sartanji.

No. 39. On the pedestal of the image of Ganpati, Gedi; gives the date Samvat 1675.

No. 40. On the back of the marble image of Adisvar in Mahavira's temple, Gedi; gives the date Samvat 1534.

No. 41. On the back of the 5th Santinath's image in Mahavira's temple at Gedi. Gives the date Samvat 1786 (Saka 1786, A. C. 1864).

No. 42. In the temple of Ravechi at Rao, showing the temple to have been built in Samvat 1878 (A. C. 1821), at the expense of Korees 24,000, by Bai Sri Samabai.

No. 43. On Palia standing outside the courtyard near Ravechi's temple, Rao, commemorating the building of a well in Samvat 1328 (A.C. 1271).

No. 44. On a Palia in the Chhatri of Rao Bharmalji at Bhuj, commemorating the burning as *sati* in Samvat 1688 (A.C. 1631) of Bai Sri Lilavati, daughter of the tributary prince of Junagadh, and queen of Rao Bharmalji.

No. 45. On a Palia in the Chhatri of Pragji at Bhuj: gives the date Samvat 1637 (A.C. 1715) as the time of the death of Rao Pragmalji, son of Rao Rayadhanji.

No. 46. On the marble slabs in the temple of Sivara Mandapa at Bhuj. It is dated Samvat 1805, Saka 1671 (A.C. 1748), and refers to the inauguration of the hall in front of the temple of Sivaram (?).

SELECT SPEECHES ON MUNICIPAL AFFAIRS.

BEFORE THE BENCH OF JUSTICES.

18th February 1867.

In support of the motion for an address to SIR BARTLE FRERE *the then retiring Governor of Bombay* :—

RAO SAHEB VISHVANATH NARAYAN MANDLIK said : The proposition which had just been submitted to the meeting by their worthy Chairman and seconded by the Hon'ble Mr. Mangaldas Nathubhoy was on. which must be acceptable to the Bench in a very peculiar mannere He thought the free discussion of municipal matters was a thing that was not indigenous in this country. In antiquarian times there might have been forms of Municipal government, and when the present Municipal Act of Bombay was discussed, it was said by one gentleman that there were particular facilities for Municipal government in India. By that, he (Mr. Mandlik) supposed, the speaker must have meant the village system which was very ancient and which, if reformed, would facilitate the introduction of Municipal government to a very great extent; but as the model of all such institutions, the Presidency municipality was the one to which all must tend, and there was no doubt that the Government of a country like India could do much to strengthen the hands of the Municipality as well as to aid their work without its influence being seen ; and where the experiment of municipal administration was set on foot under the new Act, the character of that Municipal administration was to be influenced by the Government, which was legally the superior of Municipal institutions. And he had no hesitation in saying that the government of Sir Bartle Frere had ever courted a free discussion of all the measures started by the Bench, or which had been sent to them for their opinion. Allusion had been made to the Municipal bodies existing at Madras and at Calcutta. He had no wish to disparage any sister institution to this in any part of India, but he must

say he was proud of the Bombay Municipality, of which all present were component parts; and for the reason that he thought whatever differences there had been among the constituent elements of the Bench, or between the Bench and the Government of Bombay which had watched over the Municipality with so much care—the various matters brought forward had always been broadly and intelligently discussed with the view to the solution of many difficult and intricate questions raised. For all these reasons, he thought they owed a deep debt of gratitude to the departing Governor who had watched over that, as well as many other like institutions in the country with a solicitude and interest which had not been surpassed, and which he was not sure had often been equalled in this country.

30th June 1871.

In support of MR. J. A. FORBES' *motion for reform of the then existing Municipal constitution :—*

Rao Saheb VISHVANATH NARAYAN MANDLIK said: We cannot sufficiently thank the originators of the present movement for the trouble they have taken, and in so saying I hope and trust that I express the fellings of a very large majority of the poorer rate-payers of Bombay. Almost every one of the speakers has admitted that we want a certain amount of reform and the last two speakers have admitted it distinctly. Mr. Maclean expressly, by his resolution, says so, and as a previous speaker said, year by year our expenditure has been increasing and we have been unable to control it, and we have now to go before the Government to ask for some relief. Now it appears to me that the principle of representation, with other measures which are proposed to be asked for in the resolution submitted by Mr. Forbes, is one that ought legitimately to follow upon the changes in the municipal constitution of Bombay. It was stated by one of the speakers that if we went before the Government and asked too much, there would be some danger that we should not get it. Really I do not know that that ought to be a consideration which should deter gentlemen at this meeting from expressing their views as regards the position and prospects of this municipality and the changes they would like to have introduced into it. There was a time, as the

committee appointed by the Bench showed, when there was not a single Native Justice on the Commission of the Peace for the town and island of Bombay. Native Justices, however, were afterwards introduced by an Act passed in the reign of King William IV., and we had then a large increase of Native Justices, and other changes in our municipal constitution which paved the way for Act II. of 1865. When that measure was introduced it was stated by Mr, Cassels that the two previous municipal governments of Bombay had been tried and found wanting. Now I confess that the presence of you, gentlemen, here to-day, and the speeches which have been made at this meeting, are a pretty strong evidence, and sufficient to convince any gentleman who has not been convicned before, that the same thing is to be predicated of the Act of 1865. It has been worked and tried for six years, during which two millions and odd has been run through, and this new piece of legislation, Act. II., has been found wanting, and although so far we are all agreed, it would seem as if this Bench did not know in what respects it was found wanting. Sometimes we are told that the responsibility of failure rests with the Bench, and, that as the Bench has its purse-strings in its hands, it could pull them and so bring about the desired results. But when I read the Governor's speech made on the occasion of Mr. White's motion regarding the Commissioner's tenure of office; whether the appointment of the Municipal Commissioner of Bombay should be held for three or five years, I could see that the object of the framers of the Act II. of 1865 was that the responsibility should rest with the Commissioner. On the question of responsibility, this is what Sir Bartle Frere said in the Legislative Council:—"There was at present the patent general fact of 'no results.' No particular blame could be imputed to any one, but when the bill became law the Municipal Commissioner would be the accountable person." That was in describing the previous state of things; "but when the bill became law the Municipal Commissioner will be the accountable person." That, gentlemen, was what Sir Bartle Frere said, during the discussion as to whether the Commissioner's tenure should be for three or five years. I next have to speak upon the failure of the present administration financially. The present municipal government has given us a very costly administration, and, as far as the Bench of Justices is concerned, the result is a

failure. I have in my hands the report of the Committee appointed by the Bench as to how the present Act is to be worked. This Committee consisted of our present Chairman (Mr. Scoble), the late Mr. E. Howard and others; and they proposed a plan to give the Commissioner "prompt and active support," and also to exercise a check upon his proceedings. To this end, they proposed to make some certain rules for the conduct of business by the Bench; and the previous report shows that the Committee of the Bench, also consisting of four members, the late Mr. Jagannath Sankersett being one of them, expressed the general desire of the Bench to have the real power in their own hands. They said that "no form of Municipal Government should be tolerated which deprived the Bench, the only body in this country which represents rate-payers, of all control over its officers and over the disposal of the Municipal Fund." And yet that is exactly what has now come to pass. We have now the result in the large failure. Mr. Maclean says the Bench has failed; therefore, abolish the Bench and have a Town Council. (Applause.) I think his resolution amounts to this. But if the Bench have failed, the Government, too, have failed in their duty towards the Bench, for it was only last year, of the year before, (I have the proceedings of the Legislative Council before me) that there was one thing in particular that I noticed that Mr. Mungaldass Nathoobhoy stated, in referring to the expenses of Bombay, that the present municipal offices which cost the Municipality, Rs. 30,000 per annum, could be had for half the money when the term of the lease had expired. (Hear, hear.) Mr. Mungaldass was a large house-holder himself, and would be particularly competent to pass an opinion upon that matter. He said:— "The reasons why the revenue from house-rate has not visibly declined are these: there has been no general survey for assessment purposes since the end of 1865. Mr. Crawford has declined to grant remission in a great many cases in which house-owners have not been able to produce agreements executed on stamped paper. I expect a further decline on the expiration of the leases for which houses have been let in prosperous times at high rates, which will soon have to be lowered. For instance, the premises occupied by the Municipal Commissioner's office in the Fort are not worth half the rent, Rs. 3,000 per mensem, paid under the lease. The Hon. Colonel Marriott's figures regarding the assessed value of landed property in Bombay are in-

correct." Now, Sir, as a rate-payer I should say that with that report before the Legislative Council, Government, who have the control of the Bench of Justice , would control this one item. One would expect that, at all events in the matter of house-rent to which Mr. Forbes' has called attention, it was a matter that might have been expected to have been looked to and been controlled by the Commissioner. (Hear, hear). At all events, here are the members of the Legislature discussing Colonel Marriott's motion with the expected large depreciation in the value of house property, and here we have the Commissioner after the expiry of the first lease, sanctioning a payment of nearly Rs. 3,000 per month instead of Rs. 1,500. Then, again, we have the Controller who had the honour just now of being spoken of by Mr. Forbes before the Bench as an accountant, and that no doubt he is, as I had stated some years ago ; and I am glad my view is conformed by such a high authority as Mr. Forbes ; but he is not a Controller, for hitherto he has controlled nothing, and that has been admitted in the statement before the Legislative Council in regard to some matters at all events. Therefore, in one important particular there was no reduction made, when one of Rs 1,500 could have been effected, and now Rs. 18,000 per annum are lost to the rate-payers of Bombay, and who cannot say, therefore, that the system has not failed ? (Applause.) We are told that the Town Council will not be a responsible body, that is to say, that it will be a very good body as a consultative body, but entirely unable to do any executive work, but it is not the object of Mr. Forbes' resolution to send every Town Councillor to supervise the roads, to see that the drains are all clear in their several wards, but to conduct the municipal government, and they will be assisted by a responsible secretary ; you can call him Municipal Commissioner if you will, or give him any other designation you please. The matter of salaries was not lost by the Committee who sat previous to Act II. of 1865. It is true they were then in the year 1865 and not in 1871, and there is an immense financial difference between these seven years as the state of Bombay will testify. We all accept that, and yet, what does the Committee of 1864 propose?—that " the rent should not be less than Rs. 2,000 per mensem." Now if that was the proposition in the year 1864, or before the enactment of 1865, I do say that we could very well begin with Rs. 1,500 a month in 1871. (Hear, hear). I do not consider that

Rs. 1,500 a month is at all a small sum. I know that such a valuable officer as the late secretary to the Board of Education, a gentleman who could not be surpassed in efficiency by any in this hall, the late Dr. Stowell, conducted his duties for Rs. 400 per month; and, small as the Educational Department then was as regards the number of the schools and scholars, I think as an efficient administrator that gentleman could not have been surpassed. I only quote that as one example, but there are many others which will occur to the members of the Bench. The educational system has now been entirely changed, and there is no impropriety, therefore, in referring to a gentleman who had passed away from among us, and who had done so much good to the cause of native education, and done it, too, upon Rs. 400 per month. Now I think the amendments, except the last, which is quite logical, are no amendments at all. I think Mr. Maclean's amendment exactly shows the Bench what he means; he judges of the Bench by its actions, and asks that it abolish itself with ignominy. (Laughter and hear, hear). But, Sir, the amendments which have preceded his resolution are half measures, and do not go as far as they ought. They halt at the very point at which they should not. Mr. Forbes gives you a scheme complete as a whole, and asks you to open a new leaf in your administration, while the two amendments are halting measures, and seek merely to coquet with municipal reform, but they do not proceed to reforms at all. If we are to try representation in Bombay, let us do so, and if the Government will not give us reform it is not our fault; we shall have done our duty, and the blame will rest upon the Government which refused it. (Hear, hear). Let it not be said that we have not asked for, and do not seek municipal reform. (Applause). Now the measure of 1868 having been introduced into the North-West Provinces has been alluded to by previous speakers. But those who have studied the history of legislation well know that that has not been the first of its kind. The principle of election has been introduced and acted upon by the Supreme Legislature long ago. Here is Act XVIII. of 1864 which runs thus :—

"I. On and after such date as the Chief Commissioner of Oude shall order, there shall be a Committee for the purpose of this Act, which shall be called 'The Municipal Committee of the city of Lucknow.' The said Committee shall consist of twenty-five members, of whom six shall be *ex-officio* members.

"II. The persons for the time being filling the following offices shall respectively be *ex-officio* members of the Municipal Committee. That is to say, the persons filling up the offices of Commissioner of Lucknow, Deputy Commissioner of Lucknow, Inspector General of Police in Oude, Civil Surgeon of Lucknow, Executive Engineer of Lucknow, City Magistrate of Lucknow. The non-official members of the said Committee shall be elected annually by and from amongst the inhabitants of the city and shall hold office for one year only, but shall be eligible for re-election."

If that was done in Lucknow in 1864, shall we be backward in asking for it in Bombay in 1871? Besides, Mr. Forbes' measure is by no means a radical one; it is eminently conservative, and asks only four elected members. Now the question which we have to consider is whether Act II. of 1865 has failed, and if it be the opinion of the Justices of Bombay that we ought to have the Council responsible to the city and independent of external control and therefore be responsible to the people if it fails, let us have it so, so that there can be no cavilling afterwards. I say that that is the system which must be tried in its integrity. If, again, we have a Commissioner appointed by an external power, we shall be simply repeating the same thing which has taken place during the last six years. (Applause). I say, therefore, that both, from the reason of the thing, and the past and present history of the city, and from the state of the education, which is testified of by the creation of the University of Bombay, and the enlargements of its field of operations year by year, let us go before the Legislature with a complete proposal which is a conservative proposal and not a radical one at all, inasmuch as it only seeks for four (elected) Councillors, let us go for a whole and not a partial scheme, with all the old taints upon it. We must ask for what the general voice demands and do our duty. I had intended, Sir, to give a silent vote in favor of Mr. Forbes' motion to-day. But its intrinsic merits demand that I should not do so. To mark, therefore, my appreciation of this movement, I have briefly given my sentiments—sentiments shared in by a large majority my countrymen. I therefore cordially support Mr. Forbes' motion as one of the poor ratepayers of Bombay.

16*th November* 1871.

In connection with the payment by the Municipal Executive Officers, of the Police charges for ten months, in defiance of an express resolution of the Bench to the contrary :—

The RAO SAHEB: I have a resolution to propose, and I shall first of all read it, and take the sense of the meeting through our worthy Chairman whether it should be put as a substantive proposition, for it does not conflict with the one proposed by Mr. Maxwell, or whether it should be put as an amendment.

The CHAIRMAN: Have you given notice of it?

The RAO SAHEB: It is in reference to the subject before us, and I think the present resolution no doubt censures the poor officers of the municipality, I say poor, because they seem to be like the unhappy persons in the fable, they do not know which way to pull. There is the Government, whose servants they are (certainly, they are ultimately responsible to Government), and there is the municipality, which has recently had an access of vigour, and since the last month is trying to see its way out of its difficulties, which it ought to have seen three years ago. I say, therefore, that censuring the officers of the municipality is not really hitting at the right point—is not hitting the mark. The disaster lies deeper, and unless the Bench on this occasion expresses its determination to stand on the position which the law has secured for us we shall not be doing our duty. We have just heard the very best case which could be made out for the Government by one of the members of the Finance Committee whose two colleagues resigned at the last meeting. (Hear, hear). I have no doubt that that defence is the very best that has been placed before us to-day; but I take leave to say that this Corporation exists by virtue of a law which has been passed by the Legislature of Bombay, assented to by the Supreme Council, and confirmed by Her Majesty's Principal Secretary of State. The institution and the municipal fund are under that law, and until that law is repealed, I beg leave to say that our position is very clear. As Mr. Maclean has so ably pointed out, the action of which we are now complaining is like Government going to a private officer and ordering the Treasurer to disburse a certain amount of money. Dr.

Hewlett unfortunately occupies the position of Municipal Commissioner at present, and I am glad he does—(laughter)—for at all events we shall have the health of the city secured. Merely censuring the Municipal officers who have carried out the orders of Government, with whom rests the dismissal of those officers, I think, is not a measure which we ought to take on this occasion. I think it is our duty to consult our legal advisers, and to see how this breach of the municipal law by the Government can be prevented; and if it cannot be prevented we are in such a position that we ought to refuse to pass the Budget and throw the whole burden upon Government of taking the municipal administration of the city into its own hands. Everybody must be aware that the police must be paid, but the Government ought to be aware that when a Budget is passed it is not within the power of the Justices to alter it. The Government might have introduced a short Act and altered the law, but they did not choose to do so. (Hear, hear.) There was a part of the contract under which, certainly by former usage, the Government were bound to pay a certain sum of money for the maintenance of the police. Whether that contract was right or wrong Government had acted upon it, and had put the Municipality into a position which was not of its own seeking, but which was the doing of the Government of Bombay. When that threat of additional taxation was made they might have altered a certain section of the Act so as to impose an additional rate of one per cent for a short time. Personally I am not prepared to take upon myself the odium of additional taxation, even if that were possible; but we have not the means, we have not the power. If what the Government has done now had been done three years ago, when the Bench of Justices by an unanimous resolution asked for an enquiry at the hands of Government—and met with very different treatment from the present—our position would have been much better, and probably we should have been saved all this indignation. Our position at this time is very clear, and I beg to put it to the Chairman whether the following should be put as an original proposition, or as a rider to Mr. Maxwell's:—"That in order to prevent a breach of the Municipal Act by the Government of Bombay, a case be laid before counsel by the Chairman of the Justices to ascertain what steps the Bench ought to take to protect themselves as trustees under the Act, and that meanwhile, all the officers of the Municipality be warned th at

any recurrence of such irregularity will be visited by dismissal." In proposing this resolution I think we must make a distinction between the Commissioner who is now acting and the two officers who are absent. Their relative positions are different, and on that account I make a material distinction. As to these counsels' opinions, there may be a third opinion yet that has not been laid before us; but they were all taken before this order for the payment of the police for the month of September was issued. This difficulty, therefore, did not arise in the month of October, or if it did it was the same which had arisen in June. Being so, at all events the Bench, to whom by law the Municipal Commissioner is subordinate, had equal title, if not by law by courtesy, to be consulted on the position of the Municipal Commissioner. Dr. Hewlett might have called for a special meeting, but I am sorry to say he did not. On every occasion, where a law exists that law should be strictly observed. (Hear, hear.) I hope that will always be borne in mind, for it is idle to pass empty votes of censure if we are not prepared to uphold them. With these remarks I will commit this proposition to the care of the Chairman to be proposed either as an amendment or as a substantive resolution.

The motion was rejected on a poll being taken.

THE OPENING OF THE TULSI WATER WORKS.

Before the Corporation and the Town Council.

15th March 1879.

Rao Saheb V. N. Mandlik, Chairman of the Municipal Corporation, then addressed His Excellency Sir R. Temple, as follows :—

MAY IT PLEASE YOUR EXCELLENCY,—As Chairman of the Municipal Corporation of this city, I beg to thank your Excellency on their behalf for your kindly consenting to open the Tulsi water works this day. Bombay enters to-day upon its third era of water supply. During the first era, we were entirely dependent upon our own resources within the island, the large and copious springs on the Esplanade supplying the thickly populated parts of the town. It was during this period that the late Framji Cowasji Banaji, one of the earliest pioneers of popular education and advancement, supplied fresh water (raised by fire engines and also animal power and conveyed by an acqueduct) to two reservoirs situated in the new town.

at Duncan Road for the use of the inhabitants of Kamathipura and maintained them from the year 1825 up to his death, and which works are still kept up by his heirs and successors. For promising to do this the late Sett Framjee was permitted to redeem the land tax on the Poway Estate by the Hon'ble the Court of Directors. The next was an acqueduct supplied from Dhobi Talav tank to the numerous people of that thickly populated district Paydhuni. All these resources, however, being utterly insufficient for the growing wants of the city, the Government of Lord Elphinstone sanctioned the commencement of the Vehar lake which was begun, 1856, and the main dam was completed in May 1858, and two other dams in August of the same year. In October 1859 the lake was filled up to about 9 feet from the top of the waste weir, and with the delivery of water in the town commenced in March 1860 began what I may call the second era in our water supply. The total cost of the Vehar water works was 65½ lacs, but Government gave up 20 lacs and charged the Municipality 45½ lacs as the original estimate of 25 lacs had been considerably exceeded. The present unpaid amount of the Vehar debt is Rs. 33,50,000. The Vehar lake covers an area of about 1,400 acres, and has, besides, a gathering ground of about 2,550 acres. The level of the top of the waste weir is 262·50 on Town Hall datum, and the average depth to which surface sinks yearly is about 11½ feet. The total quantity of water contained between the level of the surface of the lake when full and the lowest level at which the water can be drawn off may be taken in round numbers at 10,650,000,000 gallons, and as about 3,000,000,000 are used in the year, the quantity that would remain for use in the lake, supposing a failure of the monsoon occurred would, at the present rate of delivery, and allowing for evaporation, soakage, &c., be equivalent to about a two year's supply. For a population of abont 6,50,000 inhabitants, the Vehar main supplies about 17 gallons a head, or 11 million gallons daily; but considering the character of the Vehar water works, the probability that the Vehar main would require to be either wholly or partially relaid, and the city would have to be cut off that source of supply at least for some months and other circumstances which have been described by Mr. Pedder, Mr. Walton, Dr. Blaney, and others, it was thought proper that an independent supply of water should be secured at Tulsi, giving at least 6 gallons

a head daily, so that in case the Vehar dams failed, we should have still an independent supply, sufficient to keep the people alive until Vehar could be repaired. The new supply would also enable the service of the water to be extended to those parts to which the present water could not reach. On the 11th of January 1872, the Bench of Justices sanctioned the scheme for constructing the Tulsi dams with waste weirs, &c., at a cost of 5 lacs. The Government sanctioned a loan of 4 laks, and the Tulsi water was let into the Vehar lake in July 1872. In 1873 Mr. Pedder submitted his proposals for improvements to the city of Bombay, and amongst others he urged the completion of the Tulsi works as an independent source of supply at a cost of Rs. 34,03,913. Under this plan a twenty-two inch main is carried from the Tulsi outlet tower through the tunnel along the slope of the hills west of the Vehar valley to Bandora, thence along Mahim, the Warli Vellard and Breach Candy to Malabar Hill, and thence the main to be taken *via* Chaupati and Sonapur to the Fort and Colaba. The following objects are aimed at being accomplished in this scheme, viz :—(1). To increase the daily supply per head. (2). To give a full supply of water to those quarters such as Malabar and Kumballa Hills and Colaba which, from their elevation and distance, now received either no water or a very inadequate supply from Vehar. (3). To maintain the supply of water to the city in case of a temporary failure of the mains. (4). In case of failure of Vehar dams, the Tulsi water passed through the service-reservoir into the Vehar main at Grant Road, would give a supply of 6 gallons a head, to the whole population. The inhabitants of the following wards will be supplied from Tulsi :—

TULSI SUPPLY

Wards.	Population.
I.—Bandora	5,000
II.—Mahim and Worli...	24,352
III.—Mahalakshmi and Walkeshwar...	12,058
IV.—Chaupati, Girgaon, and Khetwadi	53,582
V.—Esplanade, Fort, and Colaba	59,160
	1,54,152

The following would be supplied at the same time from

VEHAR.

Wards.	Population.
I.—Coorla	5,000
II.—Siwri, Parel, and Sion	29,805
III.—Mazgaon and Tarwadi	31,056
IV.—Khara Talav, Koombarwada, Kamathipura, and Byculla	1,26,260
V.—Mandvi, Market and Chuckla	1,15,046
VI.—Umarkhadi and Dongri...	75,429
VII.—Dhobi Talav, Phanaswadi, and Bhuleshvar...	94,704
VIII.—Water division	22,953
	5,00,253

The discharge of Vehar being over 11,000,000 gallons daily the daily supply to the above per head would be 22 gallons. The total daily supply from Tulsi being 4,050,000 gallons, the daily supply per head to a population of 1,54,152 will be over 26 gallons. For the additional works at Tulsi a loan of 40 lacs was sanctioned by the Corporation. The scheme was submitted by the Government of Bombay to the Government of India whose sanction to the loan was granted on the 20th December 1875. The Corporation accepted the loan and resolved on the 25th February 1876 that the water works be commenced, but they suggested an alteration in the capacity of the mains which was not approved of by Government. The following are the amounts of estimates and expenditure on this head :—

		Rs.
1.	Original estimate	40,00,000
2.	Revised estimate	39,50,247
3.	Actuals of 1877-78 32,30,608	
4.	Estimated amounts for completion of the works as per statement furnished by the Executive Engineer on special duty ... 7,65,758	
5.	Local	39,96,366

So that if the Tulsi works be completed as would appear from the above statement, Rs. 4,000 will be saved on the estimated amount as above stated. The cover for the Malabar Hill reservoir is estimated

to cost about a lakh of rupees if made of iron ; but if it be constructed of masonry, it would cost Rs. 1,50,000. This sum, plus Rs. 90,000 for compensation for Government land required for the Malabar Hill reservoir, will have to be provided for out of the savings of the surface drainage loan. The water works loan would be fully spent as already stated ; and as the original estimates did not include the two items referred to above, they will have to be drawn for from another source. The Tulsi reservoir when full as it now is, contains 1,450 million gallons and gives 6 gallons per head for 6,50,000 persons or all Bombay. The service reservoir will contain a supply which will supply the whole city for 44 hours, its storage capacity being 20,250,000 gallons. It will, therefore, suffice for the whole city for the above period in case there is any burst in the main. Should there be a burst in the Vehar main, the service reservoir supply together with daily contribution from Tulsi will, it is estimated, give about 12 gallons per head for the whole of Bombay (containing 6,50,000 inhabitants) for 5 days. The following is a contrasted statement of the capacities of the two lakes :—

	Area of the Lake acres.	Area of gathering ground acres.	Total acres.	Total capacity Gallons.
Vehar.....	1,400	2,550	3,950	10,800,000,00
Tulsi	250	1,200	1,450	145,250,000

Your Excellency will thus see we have now a supply of water sufficient for all practical purposes for several years to come. And when the inauguration of the works is made to-day under your Excellency's auspices, the Corporation may well for a time rest on their oars and think of other plans for improving the drainage, the lighting—and perhaps electric lights—and numerous other measures for furthering the well-being of the inhabitants of this great city.

OPPOSING THE GRANT OF A MOIETY OF EXPENSES OF WORKING THE CONTAGIOUS DISEASES ACT IN BOMBAY.

At the Bombay Town Council.

6th July 1880.

Rao Saheb Vishvanath Narayan Mandlik said :—Mr. Chairman,—I had thought that alter the conclusions arrived at

by the Parliamentary Commissions of 1871 and 1877-73, no arguments would be required for opposing so retrograde a measure as the re-introduction of the Contagious Diseases Act into Bombay. My friend Mr. Fazulbhoy Gangjee, who spoke last, says that the facts and figures adduced by Dr. Weir, the Acting Municipal Commissioner, in support of the proposal to re-introduce the Act, are to his mind unanswerable and conclusive; that is, that this Act should be re-introduced here, inasmuch as our community has not of itself learned how to make use of a Lock Hospital. Mr. Fazulbhoy will correct if I misunderstand or misquote him, for I wish to do unto others as I would that they should do unto me. For myself I regard the step it is proposed to take as the most retrograde step—and I say so deliberately—in the history of India, which has been taken, or which could be taken, either here or elsewhere. I have had experience of life as a public man for thirty years, but the opinions of Great English writers and the contents of English official records on this subject will suffice for my present arguments. In the first place, I will refer to the speech of Mr. Childers on the Report of the Royal Commission of 1871, appointed to inquire into the working of the Act, where, speaking on the report of that Commission upon the strength of which a number of "amiable gentlemen"—myself being one of them—have forwarded a Memorial to the Government of Bombay against the re-introduction of the Act into this City—he says—and I quote from the 225th volume of *Hansard*:—

"They declared, practically that the system of the registration and periodical compulsory examination of prostitutes was a failure. They distinctly recommended that it should be discontinued, and that we should revert to the Act of 1864, which established no such periodical or compulsory examination whatever, excepting in the case of prostitutes known or informed against as being diseased. The Commission also recommended that it was desirable to take the administration of the Act out of the hands of the War Office and the Admiralty, and place it under the Home Office."

So far as evidence is concerned, therefore, I suppose this is a sufficient answer to Mr. Fazulbhoy. Mr. Massey, the Chairman of the Commission, speaking on the same occasion, says:—

"So far as the medical testimony was concerned, there can hardly be a doubt that the system of the periodical examination was the most efficaci-

ous for the restriction of disease: but, on the other hand, there were many considerations of morality and decency which rendered the majority of the Commission unwilling to recommend it. There were no doubt unpleasant exhibitions attending it, and there was something so repulsive in requiring that these unfortunate creatures should once a fortnight be examined that the majority of the Commission came to the conclusion that the principal benefit of this policy might be maintained without continuing that extreme proceeding."

It must be remembered that it is proposed that here it should be once a week, but I shall show by and bye, upon the testimony of no less an authority than that of the President of the Royal College of Physicians (who I suppose is an authority), that even this test is not to be depended upon. But I will show you what other Members of the House of Commons have said on the same occasion. The Right Honourable Mr. Henley said:—

"Before any of these things, and before the mode of dealing with the subject was passed or introduced, I oppose the introduction of this legislation. I opposed it on the simple ground—which I stated at 3 o'clock in the morning—that it was no business of the State to provide clean sin for the people. In whatever country laws of this kind have been in force, they have been quickly followed—first of all, by the depravation of the moral sense, and not long after, with the depravation of morals themselves. What are these laws? Here are people living—I will not say in defiance, but, certainly in contradiction to the laws of God and man—and by the officers of justice you recognize them and take them in hand—not to deter, not to restrain, not to reform—but simply to see that they are in a fit condition for other persons who wish to carry on the same practice as themselves. And what has been the effect in these towns? I said that these laws would produce depravation of the moral sense. We have had Returns from those towns in which these things are stated—that these unfortunate people are better dressed, that they are more orderly and decent in their behaviour. And what does all that amount to, but that they are rejoicing in that what is wrong, what is sinful, is to be stripped of all that is disgusting, and all that is abhorrent to people's sight and view, and that you are to make these women more attractive for the calling which they are unhappily carrying on. If that is not an evidence of the depravation of the moral sense, I do not know what is. What will it necessarily lead to? Can you make the people whom you wish to obey God's law, believe that you are sincere in that, when you uphold these things, especially when you make people who carry on these practices more attractive and less repulsive? As I have said before, when this sort of law exists, that sort of depravation of the moral sense follows. I held

that opinion when the laws were introduced, and I hold it now ; and I am therefore glad to record my opinion upon it. I believe, also, that the laws have failed very much in the object for which they were introduced. I believe you know very little of the actual state of matters, for you have given up all examinations of men. Therefore, you know nothing but of the men who come to you ; and while they can go to a chemist's shop and get relief at low cost and no stoppage of pay, any one who knows any thing about human nature knows that they are not likely to come to you. These are my reasons for voting against the measures, and I am glad of having one more opportunity of raising my voice against them."

Mr. Stansfeld says:—

" Our view is something very different. The function of Christian charity is to heal diseases ; and, above all, those which are the consequences of vice, because that healing gives the opportunity to reclaim, and therefore those of us who oppose this legislation, are entirely in favour of voluntary hospitals, such as those to which my right hon. friend the Member for Pontefract (Mr. Childers) has referred. But what we object to is this—and the House will, indeed, be dull-sighted if it is unable to grasp this distinction—we approve of hospitals and of reclamatory agencies, but we disapprove of the registering, of the examination of women, of the periodical examination, and of the Government guarantee. As for me I am amazed, I say, to find men incapable of understanding this, that when you have a system, whose effect—I will not speak of the object in the minds of those who introduced it—that is not the question—that has never been the question as far as I am concerned—but when you have a system, the effect and tendency of which is not to cure and to reclaim, but to cure and regulate in order that these women may be returned sound upon the market, I would ask any sensible man if he can deny, on appealing to his conscience, but that a law of this description must be calculated to lower the moral tone and the habits of the people of this country ?"

Mr. Stansfeld shows by an examination of the Returns that the result as shown are incorrect and delusive. He further shows from the evidence of Mr. Simon, Medical Officer to the Privy Council, and of Mr. Skey and of Mr. Jonathan Hutchinson, " probably the highest authority on the subject," that the severity and dangers of transmission of the disease have been exaggerated.

Since these speeches were delivered another Commission was appointed, whose recommendations are also referred to in the Memorial now before you—when so great an authority as Professor Huxley proposed to insert in the report a paragraph declaring that Scientific

Evidence utterly failed to show that such legislation had anywhere benefitted public health—

[DR. COOK: Professor Huxley is no authority at all on this subject, eminent man though he is. He may be an authority on biology and other matters, but he is not a Surgeon in practice, and has no claim to be considered an authority on the Contagious Diseases Act.]

RAO SAHEB VISHVANATH NARAYAN MANDLIK :—I am prepared to produce the opinions of 200 eminent medical men in England, Scotland, and Ireland. I do not wish to inflict on the time of my colleagues here, or any other persons, my own beliefs only; and if nothing had been said here by the advocates of this measure on this branch of the subject, I should not have said one word thereon. As the point has been introduced, I shall refer to it, and I shall prove on undoubted authority, that taking even the very lowest view of the subject—that of securing certain women from disease for the benefit of the profligate class, we are conferring benefit—that that idea is delusive.

[Mr. DOSABHOY FRAMJEE—I hope the Rao Saheb will take that view to himself, because I for one protest against being said to hold it myself.]

RAO SAHEB VISHVANATH NARAYAN MANDLIK:—This view is not my own. As I have already said, I should not presume to inflict on the Council my own view merely, at this stage, but that what I urge is the fact that such a measure as that now proposed is directly for the benefit of one class alone, and not for any moral end. I show this, amongst others, by reading the following passage from the work of Professor Amos, Professor of Jurisprudence, London University, on *Laws for the Regulation of Vice by the State.* It shows that this measure is really for the purpose of giving safety to those who wish to resort to prostitutes. After proving the perils to justice and morality involved by such hospitals, he thus speaks about the impropriety of devoting public money for such purposes :—

"But supposing no case can be made out in respect of the extraordinary danger to a helpless community which these special diseases, in comparison with all others, present, then the only remaining argument in favour of devoting public money to the cure of persons suffering from this

class of diseases above all others must be that it is a matter of extraordinary public concern that vice should ever be directly facilitated or, at least, indulged in with as little expense to the general community as possible—even though this reduction of expense necessarily involves an extension of its area. There are no writers who have the effrontery to avow in so many words that secure indulgence on the part of men is one of the benefits of advanced civilization, which must be provided for at the public charge, and at any needful sacrifice on the part of women; but there are foreign writers who, with all their hypocritical condemnation or contempt of profligacy, implicitly admit this doctrine. There can, on showing, be no ground whatever for the enormous machinery they would call into existence for the cure of venereal diseases, as contra-distinguished from all other complaints, except that every one must acquiesce in the permanence of male vice and abet it. Free public hospitals in every town for none but venereal diseases mean that the rate-payers or tax-payers, as a class, have a greater concern in women being safe for promiscuous intercourse than they have in the same women being cured of every other complaint that flesh is heir to but a venereal one. But this is only saying, in other words, that citizens must pay for their vices, and the State must organise the machinery by which they can most effectually do so. With all their show of philanthropy, such hospitals are no better than vestibules to the public brothel."

[Dr. COOK—I protest against this statement as to the meaning and intention of the Act.]

[Mr. NOWROZEE FURDOONJEE—If the speaker is to be interrupted in this way—]

[The CHAIRMAN—The Rao Saheb is quite in order, and is in possession of the chair.]

RAO SAHEB VISHVANATH NARAYAN MANDLIK:—Mr. Fazulbhoy says that medical testimony has been adduced to show that the working of the Act has done good. Now, when my friend speaks I give him credit for his opinions, but I say he does not speak as an authority on this question. He gives his opinion like a man of common sense, acting as a juryman, on the evidence submitted to him by the Municipal Commissioner who himself admits that some medical opinion is opposed to the Act, and at pages 12-13 of the compilation which has been circulated to us upon its working in Calcutta, in Madras, and Bombay, we find the result of the evidence as to the operation

of the Act in Bombay during the twenty two months it was worked in this city. A number of medical men having been consulted by Dr. Wright, the Inspector-General of Hospitals, in October 1871, the majority of these gentlemen were against the measure. Dr. Gilbert, in charge H. M.'s 21st Regiment N. I., "does not think the Contagious Diseases Act has had any effect as yet in reducing the amount of disease in the regiment." Dr. Butler, Surgeon, European General Hospital, says: "There is no appreciable decrease.' Dr. A. M. Rogers, Marine Surgeon and 2nd District Presidency Surgeon, writes, that he has "not observed any material decrease of venereal disease among the civil population." Dr. T. G. Hewlett, our former Health Officer, and who for some time was in charge of the working of the Act here, states that he is "unable to afford much information as to the decrease or otherwise of venereal disease among the civil population of Bombay, as up to this present time he has been unable to introduce a registration of sickness as well as of deaths." Then I will pass over the statement of four gentlemen, as they simply speak of the disease among men serving on board of ships, for I think the evidence is conclusive that except when regular inspection is made of the men, as used to be the case in former times, the returns are really delusive. Then Dr. Blaney, our Chairman, says: "The number of cases are not less than before the introduction of the Act, but he has very few cases of this disease." Mr. Shamrao Narayen, in charge Sunkerset's Charitable Dispensary, Dr. Atmaram Pandurung, and Dr. Coutinho think that the working of the Act has not lessened the disease. Messrs. Da Cunha and P. Gomes are of a contrary opinion, and another medical gentleman is doubtful. Next, Sir, we come to the opinion of our own Health Officer, at present Acting Municipal Commissioner, who at page 16 of this compilation gives the return of deaths from syphilis from 1876 to 1879—within which period, you will remember, there has been no such Act working in Bombay. In 1875 these deaths were 111; in 1879,35; and the decrease, we may assume, is attributable to the better habits of the people and the advance of general education and medical science among the community. Next, taking a somewhat retrospective view, by turning back to page 8 of the compilation, we find from the returns furnished by the Principal of the institution presided over by Dr. Cook, the worthy

Principal of the Grant Medical College, that the experience gained at the Jamsetjee Jejeebhoy Hospital is to the effect that the disease fluctuated, for in 1878 there were more cases than in 1877, and in 1879 fewer than in either 1877 or 1878. Certainly this diminution cannot be credited to the working of the Act because it has not been in force during that period. Now, Dr. Wright, the Inspector-General of Hospitals, under date of 9th October 1871, informs Government as follows:—"My own impression is that the Act has not been sufficiently long in operation in Bombay to admit of a decided opinion being pronounced either for or against it." So much with regard to the operation of the Act in Bombay. In Calcutta, the test of its failure is shown in a paragraph in the Report of Dr. Payne, Superintendent of the Lock Hospitals, dated 26th February 1877, and printed at page 22 of the compilation which you have before you:—

"Nothing further can be needed, I think, to establish the position of those who have contended from the first that a very large number—probably a majority—of the Calcutta prostitutes have been left untouched by the law. The probability is strengthened by the fact that, including children, no less than 223,539 males are living without wives in the town, whence Mr. Beverley concludes that as the resident widows are almost as numerous as the wives, there are possibly special influences at work attracting widows to the town from the outside population."

I read this extract fully, as I propose to speak to the point somewhat at length, because I think when observations are made in regard to the state of native society by those who do not mix with that society, they ought to be taken with a great deal of caution. While we meet with these statements on the one hand, we have heard it stated on the other (and I do not believe that this can be disputed,) that the climate, the food, and the habits of the people of India make them less predisposed to the indulgence of their passions than the people of other climates using different food, and whose habits might lead to the necessity for such laws. And I am bound to say that the poor widows of India are wholly misunderstood by European writers, especially by our worthy Health Officer—if Dr. Weir thinks I misunderstand his views I must beg his pardon. I say that if the thin end of the wedge is inserted in this manner

into this city, I dread its effects from a point of view which does not seem to have been touched upon hitherto, I mean its educational effects on the rising generations of India. As regards widows—I have not taken a note of his figures—Dr. Weir states that when a woman becomes a prostitute she is a prostitute for life. This is a statement requiring considerable modification; and with reference to a class which, I regret to say, is not represented in this Corporation, the poorer class; in many cases it is poverty, as we see from the returns, which compels the wretched women to resort to a life of prostitution, and in large cities they are so little observed that were it not for this identification and for this evidence, they would not be observed, and on their return home they would be absorbed into the general population—a fact to which these Calcutta reports bear ample testimony, for they state that this class of women is recruited from the poorer Mofussil population, who become absorbed into those classes again. At page 48 of the printed compilation it is stated:—

"This is the condition of a very large proportion of the public women on our registers. They come unknown and they go unknown, and the women who are entered as 'disappeared' are mainly of this class. The number of well-to-do women on our books is small in comparison with the poor and homeless, who live from hand to mouth, and the large majority of women is composed of the latter class. Further there is good reason for believing that many women who live by prostitution in Calcutta, bear a better character in their own country, and it is not to be expected that such women will readily put it into the power of the police to institute enquiries regarding them in their villages. Under such circumstances it is unquestionably difficult for the police to do more than satisfy themselves that no women are struck off except such as have really gone beyond jurisdiction."

Now, I think this applies to the class about which Dr. Weir has spoken in his report. Next as to the subject of registration generally. The Police Commissioner of Calcutta, in his report, dated 31st March 1879, from which I last quoted, says at page 50 of the compilation, that year by year the difficulties of the registration department are increased, and that it is very difficult to know who are prostitutes; and he adds:—"Public women of the better class can bring into Court an overwhelming amount of evidence to prove that they live under protection. Even the most public women can

always reckon on the active support of their visitors. It is known that disease in its worst type exists largely among the class of women whom the police cannot touch." This is evidence from Calcutta, and although there is plenty more of it, I will not quote further from it, but will turn to Returns from Madras. And here I will ask you to refer to page 66, where the Health Officer and Superintendent of Lock Hospitals, Madras, writes that "Clandestine or secret prostitution is the great evil we have to contend with, and it is the kind of prostitution that increases venereal diseases." As regards the employment of the police to work the Act, we have distinct statement of the head of the force in Bombay, that he protests against the police having anything whatever to do with the working of the Act. I will not refer to the evidence on this point, for when we have an excellent man at the head of the force, as we all admit Sir Frank Souter to be, objecting in the strongest terms to the police being forced to work the Act, we see at once what will be the disorganization of the force when the Act is thrust upon it. Adverting to the opposition to these Acts in England, I will refer to the 240th volume of *Hansard*, 3rd series, and read the names of some of those of the opponents. In the speech of Sir Harcourt Johnstone, introducing the measure for the re-enactment of the C. D. Act Sir Harcourt refers to the Right Hon. Mr. Henley as a popular Tory of the old stamp "one of those old-fashioned gentlemen who are rather out of date," who had been praised for never doing anything which interfered with the liberty of the subject, who was opposed to the Act believing that this question should be dealt with by moral means; and who could not understand how such an Act could be placed on the British Statute Book. Mr. Henley had said :—'It is long sing I looked into any matter of heathen ethics (the Prime Minister will correct me if I am wrong), but I do not think that in any system of heathen ethics you can find that those who tempt are less blameable than those who are tempted." Again, in regard to medical testimony, Sir Harcourt Johnstone further says, "M. Lecour gives the number of prostitutes in Paris as 30,000, and out of these, 27,000 escape his clutches." In reference to that statement of M. Lecour, I may observe that out of the fullness of the heart, the mouth speaketh. Dr. Cook thinks as a doctor, I think as a man, and as a member of the general community, and I say that my contention

is the right one; the utmost that can be urged in favour of the Act is that a certain number of men are protected from that which can be cured by the use of physic. Dr. Weir has quoted Mill, and I trust he will study what Mill says. Sir Harcourt Johnstone goes on to state with reference to the opponents of the measure :—"Then we have Mr. John Stuart Mill, who may not perhaps be considered a great statesman, and Mr. Maurice, with his broad church views. If those were not Statesmen, at all events I must claim for Mr. Henley some small reputation in that respect. But I will take the case of a woman, a woman, who 20 years ago devoted her life and sacrificed her health for the good of the soldiers of England. That woman was Florence Nightingale. She was in charge of the Government Hospital in the Crimea, sent out by Lord Herbert. She had been in charge of soldiers and knew soldiers well, and yet she was the first to sign that roll of petitions against the Acts, and she said she felt sure that the system of Government regulation of vice and examination of women is contrary, not to the rights of women, but to the general liberty of the State. She is not one of those who think that it is improper to sign the petitions, or who are too squeamish to have this matter discussed." And here, Sir, I may observe that personally, as a member of this Corporation, I do not care one straw whether this Act is introduced into the Army of Bombay or not, but for the reasons I state, and for the sake of the rising generation, I say if we are not successful here, I should use my right as a British subject and petition the Viceroy, and if necessary the Secretary of State; and, failing both, I will petition the British House of Commons. One more instance I will give from Sir Harcourt Johnstone's speech, for the name he quotes is one which commands the general respect of all. He says :—"Now, I will take another typical name, the President of the Royal College of Physicians. You may quote instances against me : but do not run away with the impression that we have no supporters, that we are fanatics : for there are several hundreds of medical men in this country and in every town in England, who hold that the examination of these wretched women cannot be depended on as a certain test whether they are diseased or not." I believe no medical man is absolutely certain on the subject, and one of the highest physicians in the country has recorded it as his belief, that in 33 per cent. of the examinations, the examiner who often—aye, usually—

examines very rapidly, would fail to detect the more serious disorders, and, therefore, the State is in this serious position—that it gives its seal and *imprimatur* to this system of periodical examination, which can only be relied upon, at the most, in two out of three cases and which the Royal Commission has recommended, should be discontinued. The Examination says to the women—not called "the Queen's women" now, as they used to be,—"you are safe, you may go." But hear what Dr. Routh says :—"Not only are these examinations outrageous because made under compulsion, but very often useless, because they do not ensure the safety of any man who may afterwards consort with these women." Well, Sir, after all this testimony in our favor I say it is simply idle to affirm that there is nothing to be argued against the measure. I will not read more of the evidence, and I will only now make a few remarks on what has occurred during this debate. My friend, Mr. Dosabhoy Framjee, stated that because there was a system of compulsory Vaccination in force in Bombay, that there was no reason why we should not have a compulsory Contagious Diseases Act in force here. He is more ingenious than discreet in this instance ; for there is no similarity between the two diseases, between the vaccination of infants and the compulsory examination of prostitutes. Small-pox is an infectious disease, likely to affect the general population without their being able to prevent it, but no man need get the venereal disease unless he *seeks* it. With this wide difference between the two diseases, it seems to me preposterous that the two should be compared for one moment.

[Mr. Dosabhoy Framjee:—I merely adverted to the compulsory treatment of women found to be affected with the disease in the same way that by Vaccination you compel people to protect themselves.]

Rao Saheb Vishvanath Narayan Mandlik :—Mr. Dosabhoy will pardon me for saying that I cannot follow his argument on this point. We cannot divest ourselves of our personal identity. No means have yet been found for dividing a man into two separate existences. An act of this kind must stand as a whole, or fall as a whole. If my friend will point out the precise way to divide the two parts, I will grant him a fair hearing, but nothing more. As to

the contention that the difference between us is a purely professional one, I trust I have shown clearly that the purely medical view of the case is not the one we ought to take, or that we can take in a matter of this kind. Mill has shown that it is one thing to cure a disease after it has arisen, but quite another thing to attempt the compulsory cure of that disease.

And with a view to what is it proposed that we should enforce this Act? Not the safety of particular individuals or the cure of a particular disease, not for the reform of society, not for the enlightenment of the city, but that certain women may go *again* upon the streets to conduct the *business* of prostitution. This is what has to be objected to, and in spite of whatever newspapers may say to the contrary, a matter which appears in the *Government Gazette* will be discussed; for man, as has been said by a celebrated writer, is merely a bundle of habits. Returning again to the subject of Dr. Weir's observations, some portions of which the newspapers state they omit for "obvious reasons," I think it is obvious that the community can only be what it wishes to be. I will not quote *Shakespeare* and *Milton*, but will only observe in the words of *Milton* that :—

> The mind is its own place, and in itself.
> Can make a Heaven of Hell, a Hell of Heaven.

The way in which Dr. Weir regards this question may be gathered from what he states in his report on the working of the Act in 1876 : "To the women themselves the Act was of the greatest benefit, not only physically but professionally. The registration ticket was equivalent to a clean bill of health and a certificate of competency." In another paragraph, alluding to an article in the *Westminster Review*, he says :—

> "I have no occasion to follow the article in its description of the laws and regulations in force on the continent of Europe for the suppression of venereal diseases. The miseries of the continental system are graphically described, and I have no desire to ignore or palliate their existence. They are the inevitable results of State attempts to prohibit a calling which unhappily appears to be essential to the voluptuous instincts of civilized man."

Now, here I differ *in toto* from Dr. Weir, for he looks at that as being *essential*, which I look at as being merely a *vice*. I regard

those who fall into the vice as objects of pity, and I look upon it as the duty of their fellowmen to assist them in their suffering, but nothing more. I do not think it needful in any way that this vice should accompany man into every state of society, and I regret that our friend Mr. Kirkham is not here, as he would have enlarged on this point more forcibly than I can—I say that if we look to the gradual improvement of humanity, why are we bound to make the Contagious Diseases Act an exception which would take humanity to be so degraded that one class must be treated as if they were a set of brutes for the gratification of the other class? And now, Sir, I have done. We are often told that there is no public opinion in India, and in the press there is an indication that the newspapers do not wish to publish such discussions, but in a heterogeneous community like ours, which is slowly rising to a due sense of its political, moral, and social importance under the ægis of British power and British civilization, I trust that the press and the public writers will assist us to do our best, so to regulate our future that we may help humanity in all its aspects, without having such a thing upon our records as the voting of the ratepayers' money for such a doubtful, if not a sinful, object as the working of the Contagious Diseases Act. (Applause.)

OPENING SPEECH

At the Municipal Corporation, 23rd July 1880.

Rao Saheb Vishvanath Narayan Mandlik :—Gentlemen,—All the papers connected with the subject of the re-introduction of the Contagious Diseases Act have been printed and circulated to you, and attached to them is a Memorial against the proposed re-introduction, signed by the Lord Bishop of Bombay. You now have before you the motion of which I have given notice, to which there is an amendment, notice of which has been received from Mr. Dosabhoy Framjee, to be seconded by Dr. Cook. The motion of which I have given notice is, " That the Corporation are unable to contribute towards the working of the Contagious Diseases Act in Bombay." The amendment is, ' That from the 1st September next the Corporation sanction a yearly grant of Rs. 15,000 towards the expense of the Lock Hospital, which is about to be established in this city by Government under Act XIV. of 1868." I will state to this meeting as briefly as possible what I said at the meeting of the Town Council on Tuesday last, adding that my object in framing the resolution standing in my name is in reference to the definite request made by Government for a contribution to the working of the Act in this City. Whilst, as I stated at the Council Meeting, I should personally be glad to contribute towards additional hospital accommodation for the relief of those suffering from disease, if required, I would not be a party to voting the ratepayers' money towards the cost of working an Act which I believe stands condemned on all sides ; and I will state shortly the grounds on which I have arrived at that conclusion. The Government Resolution of 11th March last (No. 739, General Department), says :—

" Material public benefit was derived from the working during the comparatively brief period in which its provisions were strictly carried out, and it has always been a source of regret to His Excellency the Governor in Council that, owing to purely financial considerations, it was found necessary temporarily to suspend the operation of the Act, and to interrupt its steady and continuous working."

Now this Act, as far as the Municipality were concerned, was stopped during the year 1870-71, so it cannot be said we had a large experience of it in Bombay. In the Bombay Government Administration Report for 1870-71, page 240, it is stated :—

"A lock Hospital has during the year been established in Bombay under the provisions of the Act XIV. of 1868. The working of the Act for the year under report is not considered to be satisfactory."

Passing over some further remarks which are not important, we find also the following passage :—

"Under recent arrangements the cost of working the Act has been estimated at Rs. 5,000 per mensem, or Rupees 60.000 per annum, which was to be defrayed equally by Government and by the Municipality. The Bench of Justices having passsed a Resolution withdrawing their contribution, the whole cost for the current year will have to be borne by Government."

The next year, in the Administration Report for 1871-72, the following passage occurs at page 480, with reference to the Lock Hospital :—

"This institution was closed on the last day of the financial year, the Municipal Corporat ion having refused to contribute any longer to the expenses of maintaining it.

That, so far as the Government Administration Reports are concerned, is the history of the working and of the closing of the Act. But Lock Hospitals, as such, have been at work in various parts of India for a longer period, and we see the results in the Reports of Dr. Cunningham, the Sanitary Commissioner to the Government of India. In his report for 1874, he says, at page 28 on the marginal note on the working of the Act, "Results as a whole unsatisfactory;" and in the body of his Report he states :—"These results cannot be regarded as satisfactory * * * whatever view may be taken of the question, it is evident that the rules for the prevention of venereal disease among European troops have in great measure failed and the results have fallen far short of what was anticipated." In his Report for 1875 he states, at pages 76-77, paragraph 84 :—

"This is hardly the place to enter into a detailed discussion of the Lock Hospital question, or to explain the peculiar difficulties which attend its operation in India, and the measures which have been taken

to overcome them. It is sufficient to point out that, in spite of a very general introduction of the rules for the prevention of venereal disease among European troops, the results hitherto have been a failure. In some Cantonments, no doubt, little attempt has been made to attain success, but in others, again, where the authorities have been most energetic and careful, little result has attended their efforts. The statistics of different stations are no doubt more unfavourable than they would be if the cases due to these stations were alone considered; but to attempt any more minute record than that given in the tables, would entail much extra labour with little corresponding benefit. In many instances it is almost impossible to say where or when disease was contracted. Moreover, as regards the inefficiency caused by venereal disease, it is immaterial whether it was contracted on the march or in cantonments. * * * The practical question to be determined is, what effect have the lock hospitals in numerous stations over the country had in diminishing venereal disease among British soldiers in India? and as has been already shown, the answer that must be given to this question is not favourable."

Then at the end of the paragraph he says :—

"It is very disappointing to be obliged to acknowledge that the Lock Hospitals have failed. They were introduced at the recommendation of the Sanitary Department, and year by year their working has been carefully watched, and suggestions have been made by that Department in the hopes that success would yet be attained, but so far these hopes have not been realized, and it is very evident either that the women who are the real source of evil still escape detection, or—and this is a danger which does not appear to be sufficiently appreciated—that registered women, though to all appearance healthy, are yet capable of propagating disease."

Then again, in the next Report, for the year 1877, at page 28, paragraph 53, he writes :—

"Judged by these figures the working of the Lock Hospitals in all three Presidencies during 1877 must be pronounced to have been more or less a failure. The reports which have been received from them throw no light on the subject."

In the last Report from Dr. Cunningham to which I have had access, that for 1878, he says at page 28, paragraph 30 :—

"The failure of the Lock Hospital system has thus been general and conspicuous. * * The existence of widespread distress among the people tending to drive women to prostitution to gain a living has been

frequently cited in the reports in explanation of the very unfavourable results, but the connection between the two requires further proof before the explanation can be accepted as accounting for the facts. However this may be, there is ample proof that the measures taken for the prevention of venereal diseases have proved altogether ineffectual. In many Cantonments the results of 1878 are worse than in years when no lock hospitals existed."

Then in the Report on the *Measures adopted for Sanitary Improvements in India* from June 1873 to June 1874, printed by order of the Secretary of State for India in Council, there is a very important statement by the Secretary of State which goes to support the conclusion embodied in the resolution which I now place before you :—

"The Commission consider that the returns given in the Reports from stations where there are Lock Hospitals, taken by themselves, would appear to justify the opinion stated by Dr. Balfour, that Lock Hospitals have had a steady and increasing influence on the reduction of enthetic disease amongst European Troops, but that, when the figures are compared with those for the unprotected stations and apart from a 'completly adequate explanation, they do not tell so favourably for the 'effects of Lock Hospitals on the health of British Troops. It wou'd 'appear,' the Comm ission say, 'as if at both classes of stations the preval-'ence of venereal diseases was undergoing a periodical diminution.' One favourable statistical fact is that there has been decrease of venereal affections as a whole at nine out of the eleven stations where there are Lock Hospitals, and at two stations only has there been an increase. At Banglore the regimental Lall Basaar system was considered the only means available for 'satisfactorily checking the disease among the women and improving the health of the troops as regards venereal disease. The Secretary of State, in a Despatch to the Government of Madras (Sanitary, No. 4, 31st March 1874), states emphatically that his sanction could never be accorded to such a scheme as that placed before the Banglore Committee, a proposal which the Army Sanitary Commission stigmatize as amounting 'to the establishment of public brothels 'at the cost of the State, in order that the women in them may be more 'under control.' The system of Lall Bozaars was moreover condemned many years ago in the Bengal Army."

This was on the Memorandum of the Army Sanitary Commission, and so far as I am aware, all the other reports and their Abstracts for 1877 condemned more or less the arrangements of Lock Hospitals in this and the other Presidencies of India. Now as this

matter comes before us, it is not a mere question alone of a large camp or a large cantonment or of a ship. If the population of Bombay were all living on board ship or in a large camp at Colaba under military rules, and some exceptional mode was proposed for them which was sanctioned by law, the matter would not concern me as a Member of the Corporation, and I should say nothing to it, leaving it to the Parliamentary Commission, which has condemned the fortnightly inspection, and in various ways criticised the system which comes before us now in the same form in all its deformities in the Resolution which the Government of Bombay has sent to this Corporation. Happily this is a subject on which we have sufficient data in the Parliamentary Reports to go upon, and happily we have also sufficient evidence before us to show that during the last fifteen years during which an attempt has been made to work the Act in a few towns in England, that so far from its proving beneficial, it has done nothing but unmitigated mischief. It has given more allurements to vice, which were not wanted ; it has taken away all fear from those who were misled ; and it has engendered a state of feeling towards this subject which is to be utterly deprecated ; and I do hope when it is sought to introduce a thing like this among the people of India, and a commencement made in Bombay so far as Western India is concerned, this Corporation will express its mind in the manner which may seem to it best. But after carefully considering what are likely to be the effects of such a measure on the minds of the rising generations of my countrymen, to whom the idea of the granting certificates of examination, and certifying that a certain person is fit for *this business*, the idea also that the unfortunate women are *doing a business*, is entirely new. The idea of the Act was borrowed in England from the Continent of Europe, and I believe that several members of the present Ministry and large numbers of Englishmen of all classes have expressed themselves as unmistakeably and unreservedly opposed to the Act. We are told in one of the Appendices to the Municipal Commissioner's Report for 1876, by the Health Officer, that such an Act would do good for the women who are prostitutes ; but I ask you to read the evidence of Miss Florence Nightingale, of Mr. Mill, and of many other eminent persons to the contrary. Mr. Mill has told you that there is a degradation even below the degradation of a life of prostitution ; and

when such constant and benevolent efforts are being made to extend moral and intellectual education in this country, I would ask you seriously to consider whether you will help to introduce such a measure into the midst of a civil population, the indirect and educational effects of which on the rising generation of India would be disastrous ? The evidence of competent medical authorities has been cited by the Parliamentary Commission, and although on the last occasion I was told at the Town Council that Professor Huxley was merely a Biologist, and not entitled to much consideration, I may say that at any rate he was one of the scientific men invited to act on the Parliamentary Commission, and that circumstance leads considerable weight to what he said, and what he urged before the Commission. I will not anticipate what may be said in favour of the working of this miserable Act in Bombay, and in now proposing this motion, I only wish it to be distinctly understood that, so far as this proposal goes, I do not see my way towards contributing to the working of the Act. The motion has been slightly amended, and I now propose it in its amended form :—

"That the Municipal Corporation of Bombay decline to contribute towards the cost of the working of the Contagious Diseases Act in Bombay, but that when the finances of the Municipality admit of it, the Corporation will be prepared to contribute Rs. 15,000 per annum for the mitigation of disease, in addition to the charges already incurred for the maintenance of the Gokuldas Tejpal and the Police Hospitals."

REPLY

Concluding the Debate : 13*th August* 1880.

Rao Saheb Vishvanath Narayan Mandlik said :—Before saying a few words in reference to what has occupied the attention of the Corporation for a considerable time, there are two matters, one of them of a somewhat personal nature, to which I would like to refer. A remark has been made by Dr. Cook, the meaning of which I have not quite caught. I did not wish to disturb Dr. Cook in his address, but the remark was one on which I feel sure Dr. Cook, if he sees it in the light in which I do, will do what he can to explain himself. He said, in the course of his remarks with regard to a statement put forward by some of those who opposed the Act, that the statement was fallacious, and he might almost be justified in calling it "mendacious." If Dr. Cook means that those who oppose this amendment are making "mendacious" statements, I beg leave to say that that is a word I have not usually heard employed in such discussions; therefore, I ask him if he means that those who oppose his motion are mendacious ?

[Dr. Cook :—I think I need hardly explain that what I meant was that the statements themselves had falsity in them ; as to applying falsity to the opponents of the Act I never thought of such a thing.]

Rao Saheb Vishvanath Narayan Mandlik :—The very reason why I put the question to you was, that I thought you could not have meant to have acted in a spirit contrary to that in which the whole discussion has been conducted, and to have implied that those who opposed your amendment were capable of mendacity. There is one more question, which is a departmental question, and in reference to which Dr. Cook, in regard to the failure of the Act, thought it was due in a great measure to the *personnel* of the department. I wish to ask Dr. Cook distinctly whether he means that it was Dr. Knapp's administration which failed ?

[Dr. COOK :—I am sorry I am called on to make any more decided statement.]

RAO SAHEB VISHVANATH NARAYAN MANDLIK :—Was it Dr. Knapp you referred to ?

[Mr. PETERSON :—Is it in order for the Chairman to call a Member of the Corporation to order on account of what was said at a previous meeting ?]

RAO SAHEB VISHVANATH NARAYAN MANDLIK :—I am no calling Dr. Cook to order. I am simply asking him a question as to what he meant.

[Dr. COOK :—It was my opinion and the opinion of Dr. Hunter, that Dr. Knapp was unfitted for carrying out the Act. I do not speak in any way with reference to his medical ability, which is undoubted.]

RAO SAHEB VISHVANATH NARAYAN MANDLIK :—I thank Dr. Cook for this explanation, and I will now turn to the second point, namely, a remark made by Mr. Dosabhoy Framjee. My notes of Mr. Dosabhoy's speech show that he admitted that the second paragraph of the Government Resolution, on which we are now asked to proceed, is wrong. If he does not adhere to that view, I am now prepared to show that the Resolution of Government on which he takes his stand is wrong, as proved by the evidence given to the contrary.—[Mr. DOSABHOY FRAMJEE :—I do not understand your question.]—Well, I will try to make my language clearer. Mr. Dosabhoy's observations went to prove that the second paragraph of the Government Resolution (No. 739 of 1880)—and on the strength of which we are asked to contribute Rs. 15,000,—that the working of the Act was successful, is wrong. The paragraph runs thus :—

"Material public benefit was derived from the working of the Act during the comparatively brief period in which its provisions were strictly carried out, and it has always been a source of regret to His Excellency the Governor in Council that owing to purely financial considerations it was found necessary temporarily to suspend the operation of the Act, and to interrupt its steady and continuous working."

Now, I have shown clearly from the official reports of the Sanitary Commissioner with the Government of India, of Dr. Wright, the former Inspector General of Hospitals in Bombay, and from the

recorded opinions of many well-known medical gentlemen, that the working of the Act in this city was a failure. But Mr. Dosabhoy says again that there is no evidence as to the working, therefore, according to his own statement, this Government Resolution is wrong. [Mr. DOSABHOY FRAMJEE said he had not the Government Resolution in his mind when he spoke of the want of evidence of the failure of the working of the Act. What he did say was, that the Act was not tried long enough in this city, an opinion which was shared in by Dr. Wright.] Well, gentlemen, we have now before us a proposition submitted by myself and an amendment proposed by my friend Mr. Dosabhoy, the last of which provides that this Corporation shall contribute towards the re-working of the Act of 1868. I have just read the passage of the Government Resolution, which states that material public benefit had been derived from the Act during the comparatively brief period in which its provisions were strictly carried out ; but the evidence before us, I submit, is exactly the other way, or rather there is no evidence whatever before us that any benefit has been derived. The evidence is that there was a failure in the administration, and this was, according to the evidence of Dr. Cook, due to the administration of the Act. The Inspector General of the Medical Department states he can say nothing *pro* or *con*, and the evidence of various medical gentlemen who were consulted has not been so much as referred to either by my friend Mr. Dosabhoy or by Dr. Cook. I read that evidence in my opening speech, and will not, therefore, refer to it further. Now, I will take Dr. Cook's remarks to begin with, and the first of those remarks is that the "Act will confer great benefit on the inhabitants of Bombay, if the Government resolution is properly carried out." Now, speaking simply in regard to the administrative feature of the present arrangement, I put it to the Corporation whether, whatever the administrative faults of Dr. Knapp may have been, whether if such a highly-trained officer, who, be it remembered, is one of the Professors of the Grant Medical College, and who was assisted by a large staff, failed in carrying out the C. D. Act on the last occasion, is it to be supposed that it can be carried out by a gentleman who has had no training in the classes of the College ? I speak subject to correction, but I believe the gentleman who is gazetted chief medical officer in harge of the Act has not passed any of the examinations, which

either the old graduates of the College or licentiates of medicine and surgery passed either before or since the establishment of the University have undergone. Now, if this disease is such a serious one, if it requires such long observation and patience to deal with it, and if it is only specialists who can speak on it with authority—for I see even an eminent man like Sir William Jenner declines to answer certain questions on a point connected with constitutional syphilis, on the plea that it was not his study—that being the case, is it not trifling with the Corporation to ask it to sanction an arrangement of this kind, and place our funds at the disposal of Government—I leave the constitutional point alone for the present—towards the working of an Act which on the showing of the medical authorities themselves involves greater risk of failure than it did on the last occasion ?

[DR. COOK :—It appears I have not yet been fully understood on this point. The Rao Saheb has instituted comparisons between Dr. Knapp and Mr. Anderson, and he argues that if I condemned Dr. Knapp's working of the Act, I must condemn its working by Mr. Anderson still more, as Mr. Anderson has not passed professional examinations. It was not with reference to Dr. Knapp's professional ability that I spoke, for he is most fitted from his professional training and position, to treat cases of this kind, but simply as to the administration of details which are totally unconnected with the question of medical capacity.]

RAO SAHEB VISHVANATH NARAYAN MANDLIK:—I am glad that the force of my remarks has been still further confirmed by what Dr. Cook has just said, and in this manner I am glad the professional character and capacity of Dr. Knapp, which might have suffered as matters stood, does not now suffer; but I say that if a disease like this requires to be treated so scientifically. the officer at the head of the Department ought to be a man of more varied learning and ability than even Dr. Knapp. [Mr. COWASJEE HORMUSJEE: The supervision is to be done entirely by the Surgeon General. Mr. Anderson is to be simply House Surgeon of the Lock Hospital.]

RAO SAHEB VISHVANATH NARAYAN MANDLIK:—Well, really this is Phœnix-like. We don't know where we are. And, gentlemen, you will bear with me when I say that we don't know what we are asked to spend our money on. We are at

sea. I give Dr. Cowasjee credit for interrupting me, for he acted with the best intention; but I must say that if we cannot accept as correct the arrangements of the Government as notified in the official *Gazette*, we are nowhere. If Mr. or Dr. Anderson (or whatever his official rank may be) is not fit to be entrusted with the supreme control of the Lock Hospital arrangements, then we are wasting our money to pay a gentleman who has nothing to do with the medical supervision of the Act. I should not have gone so far, but after the remarks made, I must say we do not yet know what the administrative working may be. No doubt the Surgeon General is the highest medical authority in the Presidency, but is it to be pretended that every single medical institution in the island can be personally superintended by this officer? Are we asked to believe that this must be the arrangement which Government in their wise resolution have sanctioned? I think this is simply making the whole thing a farce. Then, we have been told in several speeches that, inasmuch as, three years ago, the Corporation gave its sanction to the expenditure of a certain sum of money on the C. D. Act, or the introduction of it, it is our bounden duty to do so now. I have been anticipated in speaking against this argument by the able remarks of Professor Peterson, therefore I will not go into this part of the subject. Dr. Blaney asked you to remember that what was then determined is the very opposite of what you are now asked to do. The Corporation of that day rejected one or two amendments and wisely or unwisely said that the Act must be worked, and might be made self-supporting, or as my friend Dr. Blaney put it, that, those who wanted to indulge in this kind of thing ought to pay for it, the poor rate-payers not being taxed for the purpose. That was all that was determined three years ago, not without a struggle in the face of some opposition, which at that time failed. It is now for you to consider whether you are going, not to make the Act self-supporting, but actually to make a present of Rs. 15,000 from the Municipal purse in order to— in order to what?—to give assistance to those who indulge in vice. I am told this is a sentimental objection, but it is one hard to be got over. I give honour to my friend Dr. Pinkerton for kindly saying what he did of those who hold these sentimental objections, and I would ask you to bear with me when I point out to you only for one moment the line taken

even by Her Majesty's Government in regard to such measures. The Home Secretary, Mr. Bruce, in 1872, speaking as an official on the Bill which was eventually thrown out—proposing an amendment of the Acts of 1866 and 1869—first gave a history of the Acts, referred to the Commissions of 1864 and of 1868, and remarked as follows :—

"There was no doubt that the proposed extension of the Acts to the civil population led to the agitation, which, from that time almost to the present, raged throughout the length and breadth of the land. An association was formed, promoted by medical men, and having many branches all over the country for the purpose of advocating the extension of these Acts to the civil districts of the country. Then the opposition arose, founded first of all on the opinion that these Acts invaded private liberty ; secondly, because they appeared to give legal sanction to prostitution ; thirdly, because they tended to promote immorality among men ; and lastly, because they had a tendency still further to harden and degrade fallen women themselves. However, there could be no question whether that the public mind had been very deeply moved, and the Government were anxious, on the one hand, not lightly to abandon a course of legislation, which, in their opinion, was working very considerable good, and, on the other, that proper enquiry should be made into their operation. They therefore appointed a Commission in 1870, which reported towards the middle of the year 1871. It recommended, by a large majority, first of all the repeal of the clause which authorized the periodical examination of women ; secondly, it recommended the re-enactment of the Act of 1864, which had been repealed because its operations were extended by the Acts of 1866 and 1869, but such re-enactment would have returned to the principle of compulsory examination, which the Committee had already decided against : it also recommended that other legislation should be passed—in fact, that the whole of this legislation should be such as might be rendered available by the civil districts throughout the country as well as the naval and military stations. He would say a few words as to the result. The Commissioners were called to report, not only on the physical results, but also on what appeared to them to be the moral effects of the Acts. On both points there had been, and still was, considerable difference. Not denying that there did exist grave objections to the Acts, some occasional incentives to immorality, and that the system of examination might have a hardening influence on women, he might say, that the conclusion he arrived at was that the effect in preventing women from entering on a life of prostitution was so great that the moral good prevailed over the moral evil. When he stated that as his own opinion, he must admit that many persons, for whose opinion he had the greatest possible respect, entertained a different opinion." (*Hansard*, Vol. 209.)

I will not trespass more on your time with quotations on this point. I think this is the line my friend, Dr. Pinkerton, pointedly followed to-day. No doubt he differs from those who like myself, hold that the Act will have an immoral tendency, but we can each hold our own views, and it is for the Corporation to say what views they will carry out. Now with reference to what has been stated by Dr. Cook as to the sanctioning of prostitution by the Hindu religion, I must say the word Hindu is a very indefinite term; and seeing that Dr. Cook himself can know but a very fractional part, if anything at all, of the Hindu nation or nations, I am surprised that he, even on the authority of an eminent judge of our local High Court, should have made the statements which he put forth on this matter at our last meeting—as regarded the Muralis of Jejuri, and Bhavins on the coast, whose practices are, I understood him to say, distinctly countenanced by the Hindu religion. Now every society in the world has its evils, and there are sores which no amount of—lecturing, I was going to say—attempts at reformation have hitherto blotted out. If we have infanticide in India, we know that, unhappily, perhaps from different causes, there is infanticide on the other side of the globe. In Europe there is baby-farming, and in other parts of the world there are worse evils. I merely make use of these facts to illustrate a point of argument which was so forcibly placed before you by my friend Mr. Mehta, who, I am sure, gave me more than my due when he said what he did. The Muralis of Jejuri, the Bhavins, and others of the class on the coast are mere social excresences, and have as little to do with Hindu religion as similar moral or social excresences in the other parts of society have to do with religion or morals in any other part of the civilised world. If any of my friends can show me an authority for holding that the Hindu religion sanctions prostitution, I should feel it my duty as a man of education to say that that authority had erred. After the humble studies of more than 30 years, and the light which I have been able to derive from contact with the most eminent Sanscrit scholars in this country, if not in Europe, I am in a position to say that the Hindu religion never threw its cloak on such practices. (Hear, hear.) Then we have been referred among other things to some professional evidence. After the remarks I made at the Town Council, and the evidence I then

produced, and which has been printed and circul ted, I will not now touch upon professional evidence, but will leave it, as far as I am concerned, to what has been said in P rliament by responsible Members on both sides, and I have shown you already that even such an eminent personage as the Persident of the Royal College of Physicians is not sure as to the effect of these examinations which are now to be instituted.

But there was one name quoted during this debate—Dr. Drysdale's—as an authority, and although I have not had access to the works of that authority—yet in the *Analysis of the Evidence taken before the Contagious Diseases Commission*, prepared by Sir J. S. Trelawny, I find it stated as the purport of his evidence, that Dr. Drysdale "thinks the recognition of prostitutes as a particular class licensed to exercise an immoral profession has altogether lowered the tone of morality in France. He believes the periodical examination to have ruined the sense of shame among the Parisian women" (page 223). All I have to do as a man of common sense on the evidence before me is to ask myself what ought we to do with the money of the Corporation?—and there is much more in this pamphlet to the effect I have just quoted in support of my argument that we should not spend our money on this Act. Then, gentlemen, there was another aspect of this question placed before you, and that was the alleged improvement of the women consequent on the operation of Lock Hospitals. I am sorry to find that our own Health Officer differs from other medical authorities on this point, for he states, at page 41 of his Special Report on the Contagious Diseases Act, submitted to the Municipal Commissioner in 1876, and published together with the Commissioner's Annual Report for that year:—

"The aversion of prostitutes to Lock Hospitals is very general and deep-rooted. This aversion is equally general and strong, whether we look to the East or to the West. Its causes deserve the most careful consideration for although a few may fret under detention in hospital for diseases which they may consider trivial, the advantage of an hospital in the way of medical relief, and as an asylum, are too numerous not to be recognized by most women. Then to what is to be ascribed this dislike, to what, of all other places, there ought to be no dislike—hospitals? I believe the causes of this aversion are to be

sought for in the management and discipline of the hospitals rather than in the inconvenience of forcible medical relief. No class distinctions are recognized in the Lock Hospitals; the women are too often humiliated in little ways, and not unfrequently they are worried by the attempts of pious persons, enthusiastic to effect their conversion or reformation. If they are European women, on every side they turn to they see cards reminding them of their hateful occupation, of punishment in this world, and of destruction in the next. Is it unnatural they should dread entering asylums in which such fearful remembrances are awakened ?"

So much for the reformatory part of the Act's administration. It was stated by Mr. Dosabhoy, on the authority of the *Lancet*, that a great deal of good has been done in the towns or seaports, or rather camps he might have said, where this Act has been introduced, but if he will examine the returns and the particulars as to the inhabitants surrounding these camps, he will in reality find the disease is fearful in spite of the Act, and this can be seen nowhere mo.e remarkably than in that place which is understood to be the centre of civilization namely, Paris, for M. LeCour, the principal officer who works the Act there has given over advocating the working of the Act in the way it is proposed to administer it here. He is at last compelled to admit the futility of working the Acts, as shown in the passage I now draw your attention to. I quote from a well-known article in the *Westminster Review* for July 1876. It is a very small extract, but it gives the pith of the whole subject; for M. LeCour herein despairs of the Act, and says he can only place his hopes for the future in the adoption of other and better means. The paragraph is the commencement of a brochure written in 1874 :—

" We must cherish the hope that the rising generation will be better protected by religious education, by the law, by instruction, and by domestic solicitude and authority from the seduction which present themselves everywhere—in the street, in the workshops, in the drawing-room, in books and at the theatre, and which still intensify their manifestation in every form of that luxury of show, and tinsel, which characterises our age, and which the mourning over our national trials has not made us abandon."

If this is the remark which follows an administration of many (more than 80) years, I simply ask you in this year 1880, to pause

before you take this leap in the dark,and mark such a change in regard to the civil administration of this great dependency of the British Crown, I may say for the first time in our history of thousand of years. You have the opinion of the Sanitary Officer to the Government of India in regard to Camp Lock Hospitals. There, women are registered, and yet Dr. Cunningham says that though he has not yet been able to arrive at the true cause, they had failed. I have nothing to say against the Government working the Act in their camps in such segregated places where the general population has no access to such institutions and where they do not become part and parcel of the social system of civil society around us. But in such instances let the Acts be quietly administered; do not force the system on the people generally of this country, and subject them—I speak on the authority of Miss Florence Nightingale—to that which degrades womankind. It is not on the working of the Act for the benefit of the military and naval population that I base my objection. The ground on which I base my opposition to the Act is that, as regards the civil population, the introduction of the measure is a most unusual—I will not use any stronger term—proceeding. The Government itself in the Resolution of 1872 say nothing of such an intention, although in this Resolution of 1880, it is proposed to make the Act applicable generally. I repeat, I do not complain of regulations being made in the interest of soldiers and sailors in camps, but as regards the general public we have a right to be heard, and I do say—to use the very mildest term—that what Government now propose is an innovation of a very injurious character, the disastrous influence of which on the rising generation can hardly be calculated at this distance of time. If under a different social system, a philosopher like Mill can say,—and if some Members of this Corporation choose to deny his authority or consider that authority a very low one, I am bound to say I do not agree with them,—that there is a degradation below even that of prostitution in Europe, then I say, and I claim to speak as an authority for my countrymen here, that such exhibitions as we read of in regard to European cities are practically unknown here: but that by making these institutions part and parcel of our working political and social system we shall be taking the first step towards introducing some of the worst of these evils. It has been said that the agitation

against this Act died out four years ago, as since then there has been no debate in Parliament on the subject: and that therefore we ought not to make much out of the opposition. I think that was the gist of one speech. [Mr. JACOMB: No; I said the opposition was four years ago, and that it might be taken to have ceased as no renewed application has beeen made to Parliament]. Well, I answer Mr. Jacomb there by stating the following fact—that in the last valume of *Hansard* for 1879, there is the report of certain proceedings in Parliament on the subject, last Session. On the 11th June 1879 the Chancellor of the Exchequer nominated a Committee on the representations of the opponents of the Acts under date of 9th March previous. Eventually, on 29 July, the Bill was withdrawn. I wish to bring to the notice of the Corporation, however, that so far from the agitation—if you like to call it so—having ceased, there is a genuine desire throughout the whole of Europe to extend the movement for securing the abolition of the Acts. A medical gentleman, Dr. DaCunha sent me, only yesterday, a paper published at Rome, the *Weekly Review*, dated 4th July 1880, from an article in which Mr. Rehatsek translated for me a statement, showing that a general European conference is to be held at Genoa on the 25th September next with a view to bringing about the abolition of the Acts.

Perhaps this will show my friends who do not agree with me that instead of the movement being limited to the United Kingdom, it is spreading on the Continent, and I cannot understand how it should be otherwise, for this is also conclusively shown by the statements made by Professor Amos, Professor of Jurisprudence in the University of London, and who is not likely to be at fault in such a matter. That being so, it is idle to say that European sentiment on the subject has changed. The details which Mr. Geary gave have really not been answered, and on such an uncertain subject with regard to which half the profession seem to be on one side and half on the other, we are asked to waste money on what I believe to be merely a professional experiment, and which, speaking for myself, I believe to be eminently hurtful to the general community. If women with the disease have to be helped, by all means give them assistance, but we can see from the reports of our own Health Officer

whether without a stretch, a considerable stretch of official authority and we know what that means—certainly in this country—it is or is not an invasion of the liberty of the subject to work this Act, the results of which are certainly doubtful and which are in no case absolutely certain. I see in the *Bombay Gazette* to—day opinions of several medical authorities given from Mr. Herbert Spencer's "Study of Social Science," and those authorities show that the dangers of this disease have been fearfully exaggerated. And it is also shown that when you organize a department in any country, the interests of persons interested tend to the prolongation of its existence. I say that unless you are sure the working of this Act will do good, incalculable good, and no harm, such as the fever hospital advocated by my friend Dr. Blaney, I think you ought to pause before you vote away the ratepayers' money in this manner to help those who suffer in consequence of their own vice. Why should the poor of Bombay be mulcted in order that somebody's vice may be stimulated? The Act dose not seek the reformation of these degraded creatures; if it did, I would say let it be worked if the community wish it. But these women are to be examined and certified as fit *for business*, and the keeping of such women is stated to be *another business* by the brothel-keeper. With all due deference to the promoters of the Act I shall not be a party to voting a single pie towards the working of an enactment which is founded on such radically wrong principles. (Applause.)

The Chairman then put the following amendment, proposed by Mr. Dosabhoy Framjee, and seconded by Dr. Cook:—"That from the 1st September next the Corporation sanction a yearly grant of Rs. 15,000 towards the expenses of the lock hospital which is about to be established in the city by Government under Act XIV. of 1868." Seventeen voted for the amendment and 33 against it. The resolution proposed by the Chairman and seconded by Mr. Grattan Geary, was thereupon carried by 31 votes to 8. It was as follows:—"That the Corporation of Bombay decline to contribute towards the cost of the working of the C. D. Act in Bombay, but when the finances of the Municipality will admit they will be prepared to contribute Rs. 15,000 for hospital accommodation for the relief of disease, in addition to sums now granted for the Goculdass Tejpal and Police Hospitals."

THE DRAINAGE OF BOMBAY:

ITS HISTORY AND PROSPECTS.

On Saturday, 23rd December 1882 at the Framjee Cowasjee Institute, the Hon'ble Rao Saheb V. N. Mandlik delivered a lecture on the subject of drainage before a large audience. On the motion of Mr. Dadabhoy Nowrojee, the Hon'ble Sir Jamsetjee Jejeebhoy was called to the chair.

Rao Saheb Mandlik said—Sir Jamsetjee Jejeebhoy and gentlemen,—At starting I must apologise for not having for want of time written out my lecture like my friend, Dr. Blaney. But such as it is, I ask you to give it your best, your kindest, and your most tolerant attention, coming as it does from a man educated at one of your colleges, but not necessarily, therefore, conversant with all matters which may be said to lie within the domain of technical science. But, gentlemen, the ground is somewhat cleared by the lectures, which have preceded my own, on the statistical and scientific departments of the question. Looking at past history I may say that sanitation, strictly speaking, in Europe itself is a very modern science, and it appeals more largely to our experience and capacities as educated men in general, rather than as men of pure technical science. Speaking of sanitation in Europe, I may tell you that it was in 1844 that we heard, for the first time, a history of the sanitation of London read to the Statistical Society of that city, and a report of which you will find in the seventh volume of their journal. You will there see that although there were some quaint old regulations then existing in the metropolis of this great empire, sanitary science, as such, had no distinct place. It has been of very recent growth. In connection with this matter there are one or more explanatory circumstances which I must state in the beginning. As I said at one of the preceding meetings, I happened to write to both the leading papers of the city a letter advancing two facts, one from the last drainage report, and another from the published proceedings of the Bombay Municipal Corporation. The first was to the effect that

the fifth drainge commission, (if I may say so,) which was appointed by Sir Richard Temple, assumed that sewers carrying night-soil existed in the neighbourhood of this Institute, whereas such was not the case; and on this incorrect assumption, in my humble judgment, was based the major premiss of their calculations in favour of introducing night-soil into the sewers. The next point I submit was in regard to the unfortunate district of the city named Cammatteepoora, at the very mention of which some of the critics get offended, as the red rag offends the bull. (Applause.) I happend to represent the interests of that district for several years; and the Justices of the Peace confirmed my appointment to the Corporation at the last election by votes given in such numbers as to encourage me to purpsue my labours with unabated energy. (Applause.) The attention, care, and intelligence that has been displayed by the large and influential community of Bombay by their attendance at these lectures, and by the strong feeling which has been excited in connection with them, is so unmistakeable that it would be affectation to deny that any person who throws light upon the subject of the drainage of Bombay would be conferring a boon not only on this city, but also on India in general. (Applause.) But what I regret is the line of criticism which has often been followed, and which, without referring to the sources of information, of verifying the facts submitted in a responsible manner questions not only the facts themselves, but also the motives of those who employ them in a cause which concerns our own lives and the lives of our children. We must do battle according to our lights and according to the sound principles of constitutional government, which flourishes with unabated vigour in Great Britiain and other countries; and those who condemn us for discussing our own home questions, so to speak, appear to me to be sapping the very foundations of Indian education, which the Commission now sitting in Calcutta seeks to strengthen and to build upon. I am sorry to say it is not often the case that you get people—I can safely say this at least with respect to this Presidency—to come forward and to criticise without fear or favour such projects as the one we are now discussing. If we sometimes commit mistakes unwittingly, we will thank any one who gives us useful advice. I am sure that is the feeling with which I myself, and those who are with me, view this

matter. One word more before I have done with this aspect of the case. More than six months ago I was considering with some of my friends, amongst whom was Mr. Nanabhai Ranina, the project of starting an association of a small body of house-owners for the discussion of this question, and for bringing it before the public in an intelligent shape. It was proposed that such a body should watch our sanitary system, and do its best to help the solution of the drainage question in particular. Our deliberations at the time resulted in the meetings to which you have been invited; and those of my friends who have helped me in organising and conducting them deserve more for the success, if any, that has been achieved than I myself can individually wish or hope for.

Now, the address which I proposed to deliver this evening is on the drainage of Bombay chiefly in its historical aspect. I am quite within the mark when I say that drainage, not in its present form, but drainage in some form, has been well understood in India, and the drainage of our villages has been at once simple and economical. I know that official interference has sometimes come in to confound these village arrangements. Thus, several years ago, a circular was sent round in certain districts prohibiting the people from keeping heaps of crowdung which they used for manure, except on particular sites. But in a few months that circular, which was the fruit of ignorance, had to be withdrawn. I am sorry that those who do not understand the simple arrangements of our villages will often depend on the one-sided reports and representations of a set of officials who have been often denounced as (what are called in popular parlance) "*jo hookum*" officials. This species of humanity is still to to be found in the districts, and I may say that Government get blame and often deservedly, for depending upon the reports and *ex parte* information of such officials. If they were to consult a very simple manual in Marathi issued by Dr. Gibson very many years ago, they would know how the villagers worked without offending the laws of sanitation. Then, again, there is one more evil, from which many other evils spring, on this side of India certainly, if not in the other Presidencies; that is the extreme secrecy preserved with regard to measures, which both in justice to the people and the Government, ought to be at once

published for general information. (Applause.) Statistical information, rules and regulations in regard to sanitary measures, and the objects of and reasons for legislative Acts ought to be published as widely as possible, if the Government wishes, as I am sure it does, to avail itself of the moral and intellectual forces which have begun to work in this country through the generous policy of our rulers. It strikes me that our present procedure is like working a huge steam engine, and shutting up all its safety-valves. There is another source of danger yet arising from unnecessary interference with time-honoured and innocuous social and other customs of the people. I ask you to refer to a standard work, the *Calcutta Review*, and go back to the lectures of Dr. Chevers on sanitary science, which you will find noticed in the 27th volume of that valuable publication. The reviewer says :—"Though late in the day, hygiene or the preservation of health is now allowed to be one of the most important subjects that can engage the attention of the philanthropist. For many years on the Continent of Europe hygiene has formed a special branch of medical education. Attention to public health has been a part of the ordinary duty of the Government of the country. Comparatively lately in Great Britain a board of health has been appointed with a special medical officer attached. Up to the present time the only instruction on this subject for medical men was the scanty portion of the lectures on medico-legal medicine in which this wide and important branch could be cursorily discussed. It has been discovered that it would be well for *all youths* to be made acquainted with the first principles of public health." Now, gentlemen, here is a cue which I give you for your guidance. The reviewer says further :—"It cannot be denied that if England is decimated by deaths from preventible diseases, India is doubly so; for the disease which was in former times the chief scourge of England and is now almost unknown, is at the present day the chief cause of death among the natives of India. We refer to fevers of the intermittent and remittent type. That these are more virulent in India than they have been for several generations in England cannot be denied, but their marked decrease in many places where sanitary measures have been adopted proves that fevers and agues are scarcely more obstinate here than history tells us they were a few generations ago in Britain." The earliest of these lectures on the

laws of public health gives a short, but vivid, account of the sanitary, or rather the non-sanitary, history of England from the earliest date, and such as is well calculated to prove what has been done, and also how much remains to be done. This is told in such a way that it must have been understood by Dr. Chevers's hearers, and this abstract ought to have fully impressed them with a vital importance of the subject. It is, however, the second portion, or the leading desiderata in a system of public hygiene as applicable to the necessities and to the opinions of this great country, that must occupy our attention. The *Reviewer* goes on to say :—"Perfectly agreeing with our author in the restrictions as to the general way in which sanitary measures must be applied in this country, so as not to offend the religious prejudices of either Hindoo or Mussulman committed, doubtless for a wise purpose, to our rule, the other and wiser and more humane plan has been gradually, and by the force of reason and example, to disabuse the subjects of our teaching of those errors which evidently militate against their spiritual and physical well-being, and that without in any way attempting to inter-meddle with those of their customs which upon close investigation are found to be either useful or harmless." The lecturer then goes on to quote the rules for sanitary measures contained in the Koran and Shastras ; they embody, in fact, a system of public hygiene which, if strictly adhered to and carried out to its fullest extent, would alone be barely sufficient to meet the requirements of the most exacting sanitary reforms of the present day. (Applause.) If I had said this on my own authority, perhaps some of you would have been disposed to question my statement. I now refer you to another extract at page 7, where the reviewer says :—"It must be our aim, as much as possible, to separate the solid from the fluid portions of drainage. The former should never be permitted to be placed in a drain, but should be restored to the land as the most proper of all nutriment for the crops, from the decomposition of which it is produced. The greatest chemist of the day remarked, when in England, that the English were a clean people, that they imported vast quantities of guano each year, and washed away in their sewers what was of far more value. The time undoubtedly will come when science and mechanical chemistry shall have adopted some means successfully for making available the debris of large towns,

rendering it easy of transport without odour, and also quite harmless to the health of inhabitants. In China every particle of debris is made available for the purposes of cultivation, and why should it not be the same in Hindustan? Utopian as it may appear, we hope to see the day when every village and town in India will be rendered clean and wholesome by taking some care to give to the land that which usually remains almost at their very doors and is a most intolerable nuisance, besides rendering every village liable to a pestilence. As to the two last points alluded to, viz., personal cleanliness and the burial of the dead, the first must be accomplished by increase of general intelligence and moral causes. Personal filth is by no means a characteristic of the native of Hindustan generally; the lowest, and those who are sunk in extreme poverty, are the only people among natives who are essentially dirty. It was stated by a learned lecturer at the Bethune Society in Calcutta some years ago that prevention of disease is a modern idea. I am sorry that I have to give this assertion an emphatic denial. Those who have read Sanskrit and other works regarding the daily duties of people must have seen that those works lay down strict, if not somewhat too elaborate rules on the subject of what with propriety may be called simple drainage. I may tell you from a pretty close study of Sanskrit works of medicine that they prescribe, as the very first thing, rules for the prevention of disease and the preservation of health. It is no doubt true that some of those rules appear under a philosophical garb, and others under a religious cloak, but if you are earnest students of science, you will see in these rules a great deal of useful matter. Depend upon it, the system of syphons and joints and hermetically sealed pipes will appear simply incomprehensible to the millions of this country. If you are properly to lead those millions to the desired goal, you most rise to the hight of the position which you hold in your community. I may say besides with regard to these rules that there is no dogmatism about them. They are very simple even in their philosophy, and are so good as to stand the test of time, circumstances, and ages. I have spoken hitherto of the Hindus; but the same may be said of the Parsees and Mahomedans, who are no less particular about personal cleanliness. In regard to the other prehistoric nations of India, I have not been able to collect any precise evidence relating to their drainage arrangements. But I have tried my best; and a European scholar

of eminent attainments has favoured me with some information on the subject. [The lecturer here read a short account of the sanitary arrangements of the Hebrews and Arabs of old.] This gentleman is a scholar well-known in Bombay and the mere mention of whose name will assure you of the rigorous accuracy of his statements—Edward Rehatsek, the most learned Arabic scholar in this city, if not in India. Well, it is true, as Pope says:—

> One science only will one genius fit;
> So vast is art, so narrow human wit;
> Not only bounded to peculiar arts,
> But oft in those confined to single parts.

We are necessarily getting more and more artificial. And this constitutes a danger. There are rocks ahead in our modern civilisation; we must have buoys to mark them out, so that the social and political ship may not founder. We must be prepared to make up our minds on the large and difficult questions of the day on such evidence as comes before us, and pronounce an opinion upon them as common-sense men. Lock in his "Essay on the Human Understanding," said that some men would not read a letter if they thought it contained ill news, whilst others would not cast up their accounts if they had reason to fear they would not find themselves in a good position. This will no longer do for us in our present situation. Science, as science, derives its light from Nature and its strength from Nature's laws. It is simple, precise, perspicuous, devoid of ornament, dry and unattractive, modest in its pretensions, and free from all undue contrivance for exciting applause or obtaining attention. When you get a scheme which will give most of the requirements I have thus mentioned, stick to it and do not be led away, I pray you, by any consideration short of it. Let no meretricious frippery of expression delude you and take you from the path lying before you in this matter, namely, to enforce the utmost cleanliness and avoid all the dangers which beset the community. Now, the hindrances to our inquiry in these matters are three-fold: the first are political, the second social, and the third are general. I am afraid I shall not be able to speak fully upon all these, but I shall simply indicate within the time I have allotted to me, such notions of those hindrances as ought first to be thought of and removed. In this connection

first come our political difficulties. In considering this question of drainage, we find ourselves landed on a passage between Scylla and Charybdis, with difficulties on both sides. The new drainage scheme of Bombay, as it is now designed for the fifth time, is in this position. It is supposed by some, however, that we are already ahead of London and Great Britain generally, in sanitary science. I have read to you on a former occasion some extracts from a paper by Mr. Chadwick, one of the greatest sanitary authorities in Great Britain, if not in Europe, and I shall have occasion a few minutes hence to refer to one of his works on this subject, when you will see that the sanitary state of London is itself so imperfect on account of its underground drainage and the introduction of night-soil as to cause great alarm. But he is speaking in an atmosphere where both sides of a question can be exhaustively considered and discussed. Here, our Surgeon General of the Medical Department—I speak not of persons, but offices—gives a certain opinion in virture of his office, and the whole Medical Service, on grounds of propriety as well as courtesy, are unable to act as independent referees. (Applause.) Some of my friends whom I see here cannot, however warmly they may feel, call to account the head of their own department; and where do you stand in these circumstances? Take, again, the views of Government supported by those of their official advisers. It would ordinarily be considered very presumptuous to advance opinions upon a matter which had been decided by great authorities, but in a matter of drainage if we do not lay aside a certain amount of decorum we shall be doing an incalculable injury not only to ourselves, but to all classes of our fellow-citizens in the city of Bombay. (Applause.) I see the Municipal Commissioner publishes a paper this morning on the subject of drainage. The Municipal Commissioner kindly talked over with me most of the subjects indicated in that paper. I was not then aware that he was prepared to formulate what is now published, and which will no doubt be seriously considered by the Corporation. But as I have said before, if public bodies adopt a particular course which is afterwards found to be ruinous, it is the bounden duty of those who discover their errors to point them out; for as was said by one critic Corporations have no bodies which can be kicked, and no souls which can be saved. We must therefore bring the intelligent influence of the householders of this city to bear on this great problem of the day

and now that the scheme of local self-government is likely to be strengthened, it will probably be influenced by such action. It is the bounden duty of all citizens of this glorious empire to assist the Government to the best of their power. I have known some officers of the Government who, I am sorry to say, would wish to monopolise the thinking power of the community. (Applause.) But happily we are now breathing more freely, than was the case some years ago, and it is for you to consider that if we are to be in advance of the metropolis itself in matters of drainage, why it is that we are denied the power and authority, given to what I was going to call the commonest parish vestry, to govern ourselves in Municipal matters? To go further into the complicated question of provincial or Imperial legislation, I may point out to you that our educational requirements and our social requirements, so seriously endangered by the C. D Act, and our financial requirements, hampered in the most unmistakeable way by laying upon us charges which do not properly belong to us, the want of popular representatives in our higher Council, are grave subjects for you to consider—(Applause) and if I allude to these questions now it is because an occasion has arisen which is calculated to reach your firesides and to impose on you a task which you cannot avoid. If nothing will arouse you to a constant and intelligent interest in all Municipal matters, I at least trust that the drainage of Bombay and other Indian cities, a subject of vital importance to you all, will not be neglected. One mistake in drainage may kill hundreds of people and no one is more aware of it than our present energetic Municipal Commissioner. (Applause.) His own memorandum shows that as regards the introduction of night-soil itself into the sewers, he has promised to make a change, at all events for the present and I trust for good, in the drainage plans of this city. (Applause.) I must tell you that in these matters our authorities are at least as much to blame, if not more so, than the Corporation; and when I use the word "authorities" I distinguish them from the Corporation. The authorities have themselves, and very naturally, been guilty of what our publicists would call official tergiversation, for we have had several committees, commissions, and reports, but strange to say that except in this last, where, it seems, some of the officials have gone the whole hog, the previous committees have come to contrary conclusions. Before giving you a list of committees I must tell you

that it is not Dr. Blaney only who has considered and condemned the the Worlee outfall. Others have done the same, as you will see if you refer to the statistics. But in connection with this great outfall there is one fact which you must bear in mind, and which, I am sorry. to say. has been practically ignored by the last Commission, and that is the meteorology of Bombay. On reference to the meteorology of India, I find that for eight months of the year the wind must come across Worlee, whence you get a polluted breeze over the whole city. I have been told of High Court decrees and injunctions in reference to an explanatory letter I wrote to the papers. But there is an injunction for which the Municipality is now paying Rs. 300 a month, and we have been threatened with two more injunctions. Those who have the misfortune to live at Mahaluxmee, Malabar Hill, or Cumballa Hill can testify to the correctness of what I say, namely that they get certain unbearable odours when during the eight months the breeze blows from Worlee according to its own laws. To all these I say in sober seriousness that they ought to appoint a small committee of observation and think, not of the trouble involved, but of the well-being of themselves and families. If this be done, some valuable and useful results will be obtained. (Applause.) Above all things I beg you will not be precipitate, in taking any serious step in this matter. The Municipality has not been hasty by any means. It is to your own neglect and supineness, if you will allow me to say so, that the drainage system has been brought to such an unsatisfactory state. You should help the Municipality, and assist the Government in coming to some intelligent result. You cannot stop; you must move on, either backwards or forwards, and to do the latter is almost impossible. In my opinion you can only move on as an intelligent public. I wish to see no clamour and advise patience, although I think that in the vital matter before us, which affects every soul in the Island, directly or indirectly, our present dangerous state has supervened on account of our combined neglect and corporate supineness. Dr. Hewlett in a paper, dated May 7, 1874 observes :—

" Mr. Pedder says in his letter to the Secretary, Town Council :—'Dr. Blaney objects to the outfall because it is to windward of the city. As a matter of fact, it is nearly due north of Mombadevi Tank, and the wind is from N, W. to north of only about 65 days out of

365.' " I think he is mistaken in the latter statement. By a reference to the diagram of the prevailing wind in Bombay, published in Dr. Lumsdaine's Report for the 1st quarter of 1869, he will find that the wind blew from North-West to north for 119 days; but I maintain that this is hardly a correct point of view to take of it. The wind blows from between these points during every month of the year except July, so that the localities situated to leeward of them would be exposed to any noxious matters with which it might be tained almost constantly during the year. The purity of the breeze, which blows a mean of 18 hours from the sea, ought to be preserved by every possible means in our power; and I view any proposal which may possibly interfere with its health-giving properties with apprehension. I also regret that I cannot concur with Mr. Pedder's view reregarding the defecation of the sewage at the site proposed. The smell from the pumping station, which Mr. Pedder proposes to erect at about 500 yards from the present one, will, in my opinion, be still subject to the indraught he speaks of; for I believe that the side of the hill behind it will, when the wind is blowing strong, act like one side of a funnel, and that there will be no appreciable difference in the smell, which, he very fairly allows, is now an unendurable nuisance, which by the prevailing winds is carried towards the town; and I also believe that when the wind is light, the smell from the works will pervade the whole district, and increase the already too numerous insanitary conditions of the village of Sumbhoo Pakadee. The distance to which malaria can be carried by the wind is very great, as is shown by the noxious influence which the marshes in Salsettee cause to the public health in Bombay. And it has been noticed by Dr. Leith that, at times, the wind is tainted with a disagreeable fishy smell, communicated to it in its passage over the rocks at Worlee, which are covered with zoophytet. Attached to this report is a remarkable letter from Mr. Crawford, which forcibly portrays the innumerable difficulties that had beset him, ever since he had been at the head of Municipal affairs of the city, regardiug the discussion of the question of sewerage and drainage. In it he agrees with Major Tulloch in repudiating any sea-outfall, and urges the utilization of the sewage on the site proposed, and points out that as the experimental works on the Flats will immensely benefit the Govern-

ment, "in common fairness Government should either contribute largely in cash, or should make a grant of the land ;" and recalls to the recollection of Government a despatch from Her Majesty's Secretary of State for India, in which he hoped that the question of utilizing the sewage might be considered, and that the numerous swamps, foreshores, and low-lying waste lands in and near Bombay might then be made to yield a considerable income to the Municipality, and that all such Government lands might be granted to the Corporation. On the contrary, from the time he became Commissioner, Mr. Crawford had innumerable discussions with me and others regarding every possible place for an outlet all round the Island ; and to prove that the removal of the present site had been considered, I will refer to the following extract from page 3 of Mr. Aitken's preliminary report :—"It has been proposed by some to discharge the sewage into the sea on the western side of the Island, and I have accordingly had tidal observations taken at two of the points proposed, viz., at Worlee and at Malabar Point; but the observations show that if the sewage was discharged at Worlee although it would be mixed with a large body of tidal water, yet during eight months of the year it would be driven back to the shore between Malabar Hill and Worlee Point, and thus, being to windward of the Island, would poison the air of the whole city." Then there was a Committee in 1861 presided over by Dr. Leiths, and another under the same presidency quoted a number of high authorities in sanitary matters. There was a third in 1866, when several high authorities were unanimous that the outfall should be at the harbour side at the extreme south end of the Island. The Hon. Rao Saheb than said he had greatly exceeded the time allotted to him and yet had not half finished what he had to say, but if those who had favored him with their patient attention, would do the same once more, he would conclude his brief survey on the next day. (Applause.)

LECTURE II.

[*6th January 1883.*]

PRELIMINARY REMARKS.

On the day on which I delivered my first address appeared a Memorandum on the Drainage question, by Mr. Ollivant, our Municipal Commissioner. My sketch then made was already so long that I have had to divide into two parts what was intended to be delivered at one meeting. I am sorry therefore I cannot now enter into that Memorandum; but on a cursory perusal of it this much seems clear to me that, even as now amended in this Memorandum, the drainage scheme appears to me to be radically defective as regards sanitation.

As regards night-soil, I maintain that the Commission of 1879 made a wrong assumption in paragraph 7—(*e*) clause 1st, of their report, that a system of privies and house connections was already at work in Sonapur and Dukarwady (p. VIII.) This mistake has done more mischief than can be conceived. This is a very difficult subject, and I for one agree with Dr. McLeod, of Calcutta, that, above all things, the tone of the discussion should be temperate and the facts should be *accurately* and *carefully* sifted. To help future investigation I wrote the following letter to our Health Officer, Dr. Weir:—

"THE HERMITAGE,
6th January 1883.

"As you are our Health Officer, I ask you to favour me with the following information:—

(1) How are the new closed sewers to be ventilated?
(2) What becomes of our present man-holes?
(3) Are there to be man-holes hereafter, or no man-holes?
(4) Are there to be shafts for (1) houses, (2) gullies, (3) streets or to the (4) main branch drains; and, if so, where?
(5) Are there to be chimneys as proposed once by Dr. Cook?
(6) How many gallons per head, do you allow, for flushing per day?

Kindly oblige me with your replies, if possible, before Sunday next.

His reply is as under:—

BOMBAY, 6*th January* 1883.

"I have to acknowledge the receipt of your letter of yesterday. If you will allow me, I will answer your questions in the order in which

you have put them. I trust the information I now give will be as full as you desire. My replies are put in as concise a shape as possible:—

[I omit the questions, which he quotes.]

1. By shafts having a sectional area of about 56 square inches.
2. They are to be closed for ventilation, but to be retained for observation and to give entrance to sewer.
3. There are to be man-holes for observation and cleansing of the sewers.
4. Yes, on the sewer side of syphon to house-connections in addition to shaft ventilators on main arteries and tributaries of drainage.
5. No.
6. No exact quantity is estimated for sewer flushing; the flushing will be accomplished in three ways—
   (*a*) By pounding of sewage.
   (*b*) By automatic flushing cisterns.
   (*c*) By salt water. The quantity of water estimated as necessary for flushing closets is (2) two gallons per head per diem."

GENTLEMEN,—You will remember that Dr. McLeod gives 14 million gallons of fluid or about 30 gallons per head as flowing through the Calcutta sewers, and he yet wants more water for flushing. Remember also you must have at least 24,000 syphons, and 24,000 shafts. How many house-traps there will be you must calculate.

I would request the rate-payers of Bombay to see now what these proposals are. Since my last discourse, the *Lancet*, in its issue of November 11th, 1882 (p. 811), condemns both the expedients of air shafts and throwing open the sewers by man-holes opening only with a grating as neither suitable nor adequate. And again, on the next page in its leader upon the "Mansions of Death," the editor says, as follows, in regard to the mansions of London:—

"The mansion, too, is far worse off than the cottage, for the larger the establishment the more numerous will be the pipes by which foul air is thus laid on from sewer to house. It is true that most of the drain connections referred to are provided with some form of trap; but it is well-known that even the most perfectly designed apparatus cannot be trusted to keep back noxious effluvia from the sewer, especially when there is a marked difference between the temperature on the house side and that on the sewer side of the trap. Hence, we cannot too emphatically protest against the prevailing and misplaced faith in the power of traps to keep sewer air out of houses."

Gentlemen, these matters are of vital import, and you must consider them seriously. I shall now resume my discourse.

Gentlemen, the persistence in a system of closed sewers and house connections such as are now being imposed upon us is a measure of which it may with truth be said that by it, "we have nothing to do." And there may be some few old hysterical men amongst you who will tell you of the 17 Lacks spent already which will be rendered useless, if you don't swallow the whole pill at all hazards. Gentlemen, I for one don't advise you to follow such a course. I pray you to pause, and think, and then act as may seem to you best.

On the first occasion I left you at the Worley Out-fall, which I trust some of you have inspected for yourselves. A correspondent of one of the daily papers has been lately describing the absence of smell from this place. I trust he will soon prove the sincerity of his convictions by building a house in the vicinity and enjoying all the odours of the pumping station exclusively. I have already told you that this out-fall has been condemned by more authorities than one. Dr. Lumsdain only accepts it "on the distinct understanding that the cost of the Coorla out-fall is beyond our means."* The first Drainage Committee† approved of Mr. Tracy's scheme for draining the Fort, the Native town and immediate suburbs as far north as the race-course into the harbour. This was approved by the local and Home Governments and ordered to be carried out in 1863.

A second Committee‡ was appointed to discuss Mr. Bulkley's project. It again concurred in the harbour out-fall and recom-

---

* Minute dated 31st March 1874.

† *President.*

Dr. A. H. Leith, Deputy Inspector General of Hospitals

Members.

Captain J. Jones, R. E.

R. Graham Esquire, C. E., G. I. P. R. Company.

Colonel Pitt-Kennedy, C. E., B. B. & C. I. Railway.

J. Scoot Esqr., C. E., Elphinstone Land and Press Company.

C. Forjett Esqr., Commissioner of Police.

Secretary.—T. G. Hewlett Esqr., Assistant Surgeon Bombay Army.

‡ Dr. Leith, Department Inspector General.

mended the flats to be drained at Worley by gravitation. Dr. Leith distinctly objected to the discharge of sewage on the western or weather-shore.* Colonel De Lisle accepted the harbour-ward discharge, but insisted on its previous de-odourisation. The late Mr. Ormiston condemned the Worley out-fall and trusted to his own senses, which I suppose we may do even now. Mr. Aitkin in 1866 proposed one out of 3 sites on the harbour side of Colaba.

A third Committee† presided over by Dr. Leith unanimously approved of a harbour side out-fall and a discharge at the extreme South end of the Island. Government approved of this out-fall.

Colonel De Lisle, R. E.
C. Thwaites Esqr., C. E.
T. A. Bulkley Esqr., C. E.
T. Ormiston Esqr., C. E.
Captain Fuller, R. E.
A. W. Forde Esqr., C. E.
W. McClelland Esqr., C. E.
J. R. Rushton Esqr., C. E.
Captain Ducat, R. E.

* Dr. Leith said that it is objectionable to discharge the sewage on the Western or weather shore, on account of its interfering with the purity of the health-giving sea-breeze, and the nuisance it would be to the inhabitants on the part of the Island to leeward of the out-fall. Whether that locality will eventually be thinly or thickly populated, we cannot at present know; but in making provision for the uncertain future, it is proper to take into account the possibility of the population being numerous."

† *President*

Dr. A. H. Leith, Department Inspector General.

Members:—

Lieutenant Colonel De Lisle, R. E.
A. Crawford Esqr., C. S., Municipal Commissioner.
Capt. Henry, Superintendent P. & O. Company.
T. Ormiston Esqr., C. E.
J. R. Rushton Esqr., C. E.

Then came the Hon'ble Mr. Scoble's Commission.*

Its report, gentlemen, is available to you ; but I shall take the liberty of quoting hereafter the whole Resolution of the Government of Bombay on the above report, as it is a very important document, and as it seems to have been entirely forgotten in these discussions. It is again in favour of the harbour out-fall, which one competent member of the present Corporation, Mr. Gostling, has lately told you in a letter to the *Bombay Gazette*, is perfectly feasible. It is true at Mr. Rawlinson's recommendation, this was disapproved ; but on the following understanding.—" That the idea of casting sewage into the sea should be distinctly given up and that the people of Bombay should at once make up their minds to utilize it on land." Mr. Rawlinson, however, again condemned the wisdom of discharging sewage continuously on any point on the western coast of the Island.

Dr. Hewlett, from whose minute of the 7th May 1874 I have largely quoted facts and previous history of the question, disapproves of the outfall and Dr. Weir only accepts it with reservation.

Every one who thought he had something to say has written on the drainage and the Worley outfall. Thus Major Ducat condemns Worley entirely and would give us 3 distinct systems of sewers which will remove all sewage matters within 2 hours at a cost of between 28 and 30 lakhs of Rupees. But he adds to this the admission that he had neither the leisure nor data to estimate the cost accurately. I have already indicated the evidence which now exists against this outfall. Its removal, partial or total, is to my mind only a question of time. I say partial, because during the monsoon months the wind being from the south, it may be comparatively innocuous and the impracticability of utilizing sewage at that time may be also thus obviated. I have dwelt on it here to this extent because I left you in it ; but that is by no means the chief subject or object of my present discourse.

---

* *President.*

The Hon'ble A. R. Scoble, Chairman of Bench of Justices.

Members:—

Col. Kendal R. E.	Dr. W. G. Hunter.
Lt. Col. Trevor, R. E.	Dr. Lyon, *Secretary.*

The next question that I have now to address myself to is the sewage, the means of taking it away, and the propriety of those means. The following is an abstract complied with the help of an independent Scientific friend. "The quantity of excreta of a full grown adult male is 4 ounces by weight—daily of solid excreta, and 50 ounces by measure of liquid excreta daily.

"Mr. Faucus' experiments on Bengalee prisoners give an average bowel excretion of 12 ounces and in Bombay Dr. Hewlett found the alvine discharges to be as large.

"Taking all ages and both sexes into consideration, we may estimate the daily amount per head of population in Europe as $2\frac{1}{2}$ ounces of fæcal and 40 ounces of urinary discharge.

"Frankland estimates the mean daily amount per head as 3 ounces of fæce may be taken as the average and nearly 40 ounces by measure of urine."

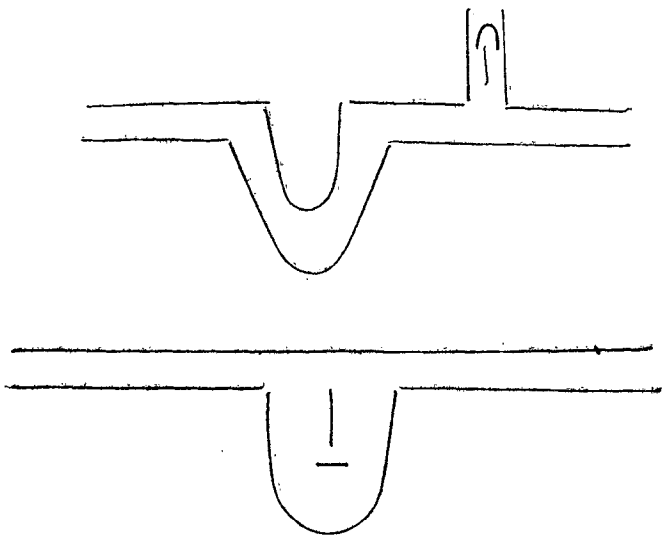
"Hence for Bombay 6 ounces of solid and 40 ounces of liquid per head. According to the Census of February 1881, the Population of the City of Bombay is 7,73,196 or in round numbers 7,73,200. Therefore that number $\times \frac{6}{16} = \frac{2319600}{8} = 289950$ lbs. $= 129{\cdot}4$ tons daily of solid excreta; and $773200 \times \frac{40}{160} = 193{,}300$ Gallons daily of liquid excreta—urine.

"Whether the solid excreta pass in or not, the liquid in the sewers must always contain either suspended or dissolved animal and vegetable matters derived from the refuse of houses. It is in every case more or less impure containing animal and vegetable substances in a state of commencing decay which substances pass readily into putrifaction. These general views apply to any sewer whether it contains solid excreta or not, although if these excreta can be perfectly excluded the sewer water is less offensive.

"It is then often poured into streams without previous purification, though doubtless this practice will gradually be restricted by law. [Parkes.]

Solid excreta unmixed with urine decompose slowly. Urine alone decomposes slowly. Both mixed, rapid decomposition, and consequent evolution of fætid gases take place, to prevent which a system of syphons somewhat like the one I now show you with a

plentiful supply of water must be used, at each house, gully, and opening; and after all to but little purpose.



I will allow my medical guide to tell his own story:—

"What is called sewer gas is a mixture of various substances. These may be classified into three groups according to their dangerous character:—

(*a*) Inorganic and organic gases such as carbonic acid, carburretted hydrogen, sulphurretted hydrogen—various kinds of ammonias &c. These are not respirable and are more or less poisonous.

(*b*) Minute particles of organic origin—particles of decaying organic matter and various law organisms. The nature of these particles and organisms is not well ascertained but they are believed to constitute the chiefly dangerous element in sewer-gas.

(*c*) Organic particles of a specific origin and nature and being the cause of specific diseases such as cholera and typhoid fever. These give to sewage its most dangerous character. The substances of the first two classes are generated by the decomposition of organic matter either of vegetable or animal origin; and this decomposition

is favoured by moisture and warmth and absence of strong light and heat and thorough and free ventilation. All these conditions are perfectly and admirably satisfied in sewers in which liquid excreta and waste water from houses flow. Solid excreta only supply more organic matter for decomposition. Sewage unmixed with solid excreta, will always contain a considerable amount of organic matter and this will be quite efficient to generate injurious quantities of sewer gas—admixture of solid excreta will greatly increase the amount of the sewer-gas generated in the sewers. But there is still greater danger arising from the admission of solid excreta into the drains of a town. Poisons of disease like cholera and typhoid fever, two of the most virulent specific diseases, are known to be discharged by patients affected by these diseases, in their intestinal evacuations. In a town where the intestinal excretions of persons are admitted into the general drains of the town, such a contamination of the contents of the drains by the poisonous germs of these virulent specific diseases, is certain to occur and in the drains, those poisonous germs are brought under conditions most fitted for their enormously rapid development and multiplication. An individual case or two occurring in a town where the solid excreta are allowed to dry under the influence of sun and dry air, or are removed to a distance and there treated by these two natural agents would, it is highly probable, die out. But the construction of a thickly ramifying net-work of tubes communicating with every house in the town containing all the best condition for the multiplication of specific germs, and receiving unreservedly all the excretions of the inhabitants of a town, ensures that such a sporadic or individual case of diseases as cholera or typhoid fever shall not die out but in all probability, give rise to more cases and thence to an epidemic of the disease, by infecting the water supply of that town. It is known that no sort of material that can be used for the construction of the sewers is proof against leakage and capillary action. It is most dangerous therefore to the health of a people, to lay tubes carrying their water-supply, alongside or in the same bed as the tubes carrying this most dangerous material in their interior. The exclusion of solid excreta from the sewers will remove this most dangerous character of sewer-gas and liquid sewage. Yet the sewer-gas *will* arise from liquid excreta and waste water from houses, and it seems practically impossible to strictly exclude solid

excreta from such drains, for washings of privies cannot but find their way with the liquid excreta into the drains. Hence in the system of drains carrying such contents the nature of danger remains the same though its amount is comparatively less. It is true that the danger of contamination of the air of a house, by the sewer-gas is removed by the connection of the house-pipes with the street drains, being made through what is called a syphon arrangement (like that roughly sketched above.) The principle of this arrangement is that a column of water prevents the regurgitation of sewer-gas backwards. But this column of water prevents the regurgitation of sewer-gas from one surface and gives it off at the other, and this drawback in the syphon arrangement is to a certain extent only, remedied by ensuring that the protecting column of water is renewed as often as possible.

This suggests another plan where this protective syphon arrangement can be better applied. Suppose the solid excreta were collected and carried by carts to a certain point sufficiently distant from the central thick population of the city and there thrown into the main-drain carrying the liquid sullage of the city and the large amount of sewer-gas generated at this point and beyond it, is prevented from moving back by a big syphon arrangement, immediately behind the point where the solid excreta are admitted into the drain. Now, it is highly probable that flow of liquid matter in the main-drain carrying the waste water of the whole city will be almost constant. If this be so, the water in the syphon separated by the air of the drains on either side of it, shall be constantly renewed and there may be less danger of sewer-gas getting absorbed at one surface and being given off at the other.—The flowing of sewer-gas backwards occurs by means of diffusion, and this takes place through air in the drains, when they are partially filled. The drains will perhaps be partially filled for the greater part of the day. Yet the portion of the drain forming the syphon can under no circumstances be half filled. Thus the matters filling this portion of the drain completely shut the air in the drains on one side from that in the drains on the other side; moreover a constant flow of liquid in the main drain will ensure constant renewal of liquid in the syphon. This constant renewal of liquid in the syphon is impracticable in the case of house-pipes. The gas

will therefore be absorbed on one side and given off on the other; they must therefore be entirely abandoned."

This to my mind is conclusive. By the new drainage system and house-connections, sewer gas and its dangers will be generated and imported into our houses, whether night-soil be introduced into the sewers, or simply liquid sewage, urine and the rest. That danger can be only averted by disconnecting the houses altogether and by having open drains as far as possible throughout the city.

It must be borne in mind that during several stages of the discussions, more than one officer has reported that street sewers can safely be built because the privies in Bombay are *outside* the houses having air-space around them, and detached from the houses: (Surgeon T. S. Weir, p. 119, Parliamentary Report on Sanitary Measures for India Vol. X.): and now we are asked to forget all that and connect all houses in the city with these underground drains, and bring death to our doors. I am sorry I am constrained by the evidence before me to oppose house-connections entirely. Open side-gutters, which it is now getting the fashion in some quarters to laugh at, were advocated very lately; and built by Mr. Braham, our present Deputy Executive Engineer in Koomharwada in 1877-78 which he said could be used instead of, (mark gentlemen) underground sewers in the poorer districts of the city.

Again, speaking of the Camateepoora drains, Dr. Weir says—'perhaps the very imperfection of these drains has secured for them ventilation, for we do not perceive from them the offensive emanations that arise from the new system of sewers." [Letter No. 8152 of 1879, dated the 11th July 1879, page 15]. Gentlemen, there is one thing which I ask you to remember in connection with these sewer-emanations is this, that your noses are no protection against them; for it has been proved that the more inodorous they are, they are perhaps more deadly. And he (Dr. Weir) says that the measures that are demanded in Camateepoora are the completion and improvement of the system introduced in 1869, (Id. p. 18) that is as proposed by Mr. Scoble's commission—the improvement of the Halalcore system and surface drainage (Government Resolution Para 16). Even the Commission of 1877-78 (whose report is said to be the text for the present drainage) say—"An absolutely open sewer

would be safest, and the nearer a sewer is brought to this by the provision of numerous openings, the less possibility is there of any dangerous accumulation of sewer gases. With free ventilation in the main sewers, there can be no rushes of sewer gases into the pipe drain. With the pipe drains cut off from the houses by an air space, there can be no rush of sewer gases into the houses." Thus every one speaks highly of open sewers, and yet we are now threatened with closed retorts producing sewer-gas, where there was no gas before, and house-connections which will look so fascinating and yet so killing and destructive.

Gentlemen, I have not rested only with the opinion and facts now read to you. I have submitted the whole question to another gentleman of eminent talents and great experience—a student of science and a practical man, having more than 30 years' experience of Bombay. His reply is more emphatic, and condemnatory of the system* altogather. He thinks we are being mounted on an official hobby—which I may say has been caparisoned on a fictitious saddle from Dukkerwady and Dhobitalao.†

Let us now examine such other evidence as I have been able to collect during the short time available to me. First of all, I will give you two extracts from the official reports as to the

---

* My questions to which the above was a reply were as follows:—

Kindly look up into the authorities and let me know average quantity of the urine of an adult.

Do. of a child.

N.B.—I. If you can get at the last census figure total quantity of daily urine calculated as above.

II. Total fæcal matter calculated as above. (Kindly quote authorities if any.)

III. Supposing *urine* and liquid dirty matter is carried by pipe-drains will it produce sewer gas or mephatic-gas?

IV. Suppose solid fæcal matter were thrown into the *drain*—(pipe-drain) beyond Bellasis road bridge, will the sewer gas that is generated come back into the city, and if so, can it be prevented? Are there any authoritative results of experiments published on the subject?

† Appended is the second opinion on the subject generally.

drainage of H. E. the Governor's palace at Ganesh Khind near Poona :—

Drainage of buildings.—Even attempts which have been made to drain buildings have been of very doubtful utility. We are told, for example, in regard to the pipe drainage in use round the new Artillery barracks at Ahmednuggur, that " it is a wonder that typhoid fever has not ere this broken out." There is no office plan of these drains.

The account given of the drainage at the Governor's residence at Ganesh Khind, until Sir Richard Temple came, is scarcely credible. There appears to have been a community of foul air extending throughout the drainage system and every bed room in the house. In this case also, there was no drainage plan, and the only information available was Native oral tradition.

With such facts before us it seems doubtful whether, in the present state of intelligence, the execution of drainage works should be encouraged at Military stations. A Sanitary engineer would put the matter to rights at once, but we have no proof as yet of any really good and efficient drainage having been carried out at any station, although there is no reason, except absence of skill, why every station should not be drained.

It is evident that the work must be systematically undertaken, that the plans should be of the simplest character, and that no communication should be possible between any sewer or drain and any living room or water cistern.

[Extract from the Memorandum of the Army Sanitary Commission on the Report of the Bombay Sanitary Commissioner for 1876 para : 11:—

Again :

" Mr. Lumsdaine's Report is concluded by an account of the Sanitary condition of Government House at Ganesh Khind, near Poona, which he says " has of late acquired an unenviable notoriety as being an unhealthy residence, and, whether the causes were within or without, there is no disguising the fact that there has been more sickness than was to be expected in a house so carefuly designed and built, and so well situated."

" We noticed the complaints about this house in a former Memorandum, but the present report gives the details, which show that the sanitary state of this building is neither better nor worse than that of many large mansions at home, and that in attempting to drain the house the engineer has arrived at the practical result of delivering sewer air into it. Foul air from the drain is constantly escaping into the

house; but, fortunately for all, it is at once largely diluted (by open doors and windows), and were it not for this typhoid would most assuredly have shown itself long ago."

The fact that the "abominable" smell was prevented "by pasting a piece of paper over the rose of the bath overflow," is proof of a fairly free communication between the house and the drain, and when the rose was closed there was still an escape through the safe waste. What occured in that room occurs in all at all times, and the degree of intensity varies with shifts of wind and such like accidents.

At those times when doors and windows are more or less closed, as at night, there is a general septic condition within the house, which is enough, and more than enough, to account for the sickness that has prevailed."

When such a state of matters exists at head quarters, what can be expected at outstations? Unfortunately, mischievous works of this class may be found plentifully enough in London, or in any English town. The only cure is in principle to separate all overflow pipes proceeding from water cisterns, lavatories, bath rooms, sinks, &., from direct connection with the drains, by making them open over a trapped gully by an open mouth in the open air. A leaden pipe, an inch and a half or two inches in diameter, carried from the points of overflow directly out of the house by the shortest route, and there opened and left open in the way stated, might possibly remedy at a cheap rate the whole present evil.

It is clear that the existing system of drainage should be removed.

Mr. Lumsdaine's report on this house shows the kind of inspection reports which are greatly wanted for barracks, hospitals, jails and other buildings all over the presidency. The evils which would certainly be discovered might not be of precisely the same character as those found in Government house; but there is reason to fear that, in not a few instances there have been causes in operation productive of similar air impurities in barrack rooms, and other inhabited accommodations."

[Extract from the Memorandum of the Army Sanitary Commission on the Report of the Bombay Sanitary Commissioner for 1878 para : 18.]

If this is the case with Genesh Khind, what will be the state of the 24,000 houses in Bombay ?

What is the evidence in Bombay itself in regard to the character of the drainage which has been sought to be inflicted upon us ? The state of the Elphinstone Circle house-drains is said to be miserable.

The drainage of the fort which, it was said, would be such as would "hereafter fall in with any system of outfall," (Municipal Commissioner's Report, for 1865, page 20) is now described by Mr. Walton as useless. The houses in Church Gate Street are said to be exposed to sewer gas.

After the sort, the second is the Camateepoora district for the improvement of which the Municipality spent lacks and took credit to itself in 1868 and in 1869 in these terms :—

Camateepoora will be completly drained before next monsoon, and a complete transformation of the neighbourhood has been brought about; instead of reeking open earth ditches and swampy roads, there are well-metalled, properly curbed thoroughfares with surface and sewage drainage.'' (Report for 1868 Page 12.)

Again, Camateepoora drainage completed. There can be no doubt that this district, with an area of 51 acres and a population of 26,000 has been *immensely improved* by the drainage works." (Report for 1869, Page 12.)

Gentlemen, you have looked at one side of the picture of Camateepoora. Now look at the other.—I give you a few extracts from the resolution of the Town Council dated the 31st October 1880 :—

"2. That for upwards of twelve years the Camtteepoora district exhibited a rate of mortality considerably in excess of that of any other district in the city, and it was repeatedly brought to the notice of the Town Council and the Corporation during the last three years that some special insanitary condition must be the cause of the excessive mortality

"3. The Health Officer, in his Annual Reports for 1878 and 1879, pointed out serious defects in the sewer system of Camateepoora. In the report for 1879, page 322, he observes:- The sewers and pipe drains of Camateepoora emit the most offensive putrid smells: in some streets these emanations are more felt than in others, and their intensity varies according to the season; this hot weather the smell from many of the manholes was overpowering, and I myself have felt quite sick from breathing the gust of air rushing out of a manhole.

. . . . . .

"5. On the 12th August, 1880, the Executive Engineer on Special Duty, submitting a report to the Municipal Commissioner on the same subject, says:—

"The system of drainage now in force in Camateepoora is a complete failure, and I cannot but think it must have been the intention of

the Engineer who designed and carried it out to extend house-connections to it, for I can in no other way explain the necessity for laying pipes down the centre of the streets. I must add also that the joints of the pipes are made of mud, and therefore they must be taken up and relaid in cement before sewage can pass through them. The most important objection to the present system of drainage of Camateepoora is the fact that the storm water and sewage are conducted by the same channel, and the brick sewers connect direct with the old Oomercarry sewer, which being unventilated must force its gases up them into the house-connections or out of the street ventilators. In the system of drainage for Camateepoora which I am about to submit to you, I propose to deal with that district exactly on the principle sanctioned by the Drainage Commission, that is, I propose to take up all existing pipes, relay them (with cement joints) in the gullies at the back of the houses, and make them discharge into three 12" or 15" pipe sewers. From the bell-mouth junction in the new main sewer at Grant Road it will be necessary to extend the 3·9 by 2·6 brick sewer to the entrance of Cursetjee Suklajee Street, and thus conduct the sewage from Camateepoora direct into the new system. If this is not done, the Camateepoora pipe system must connect with the old system, in which case the gases along the street may be as bad as ever. I don't think any money should be spent upon the drainage of Camateepoora unless the system to be adopted provides for the complete segregation of sewage and rain water, and for the carriage of the sewage into the new system of main sewers."

"6. The Chairman of the Corporation, who is a representative member of the Camateepoora Ward, visited the district in company with some of the executive officers of the Municipality, and satisfied himself that the atmosphere of the district was seriously visited with sewer air, and immediatly afterwards represented the matter to the Corporation, having previously called for a report on the existing system of sewerage."

Notwithstanding the above evidence and a great deal more which is now within our reach, the Corporation desirous of giving the present defective system a fair trial passed the following Resolution :—

That the Town Council be recommended to provide, at a cost not exceeding Rs. 67,612 out of any surplus that may remain from the 17 Lacs Loan after the completion of the Drainage Works already sanctioned for the cost of the following works:—First, removing the earthenware-pipe drains from the centre of the cross streets in Camateepoora, and relaying them in the gulleys at the back of the houses, as recommeded by the Deputy Executive Engineer; Second, cost of 3 shaft ventilators to be erected in connection with the two main brick sewers of Camateepoora, or that other equally efficient means be provided for removing the noxious emanations from the drains thereat."

A question may be raised as to why this experiment was ordered of all places in Camateepoora and in no other place. In 1879 when I was a member for the Camateepoora Ward and Chairman of the Corporation, my attention was drawn to the unhealthy district which I then represented, and Dr. Weir who was also then the Health officer of the city went with me over nearly the whole of Camateepoora when I first saw how money had been wasted in laying down a system of pipes in the centre of roads without any connections to feed them, and how the man-holes spread noxious effluvia and unbearable odours brought into this district in an intensified form by the construction of the large Umarkhadi sewer. I then felt (and now feel) that we were responsible as a Corporation for the hygenic impurities of the Camateepoora District, and that we ought to do our best to remove them. Hence my motion which was approved and sanctioned by the Corporation.

All of us, gentlemen, take credit for *this* improvement and *that* improvement. We have been told on ever so many occasions since 1863, that each officer who was then advocating certain measures, was *responsible* for the construction of certain works and that they *must* be constructed. What is the meaning of that *responsibility* ? Simply nothing. Who is *responsible* for laying down empty pipes and for planting open man-holes sending death broad-cast through large and densely populated districts for ever so many years in Camateepoora ? I ask again who is *responsible* ? Each has probably done best according to his lights and those who now criticize get roundly abused, for doing their work, for giving facts ; for adducing evidence both on the spot and from Europe and for disenchanting you of those wonderful illusions raised by the official wand, which once ruled over you of the existing deplorable state of things in Camateepoora. I have already read to you the Town Council's own account, and to that and to the documents referred to therein, I beg to refer you for further details.

Nothing having been done to carry out the sanctioned experiments in Camateepoora, a question was further asked on the 3rd March 1882 as to what had been done ; the answer is still the same. No progress.

The result is that as regards nightsoil and the Camateepoora drainage, the Corporation sanctioned certain experiments in 1879 and

nothing has yet been done; and we are all talking about the complete closed sewerage of Bombay when we know absolutely nothing in its favor; when all that is known is against it; when the Corporation knows less even of its A. B. C. the study of which it has itself officially directed. And meanwhile house-connections in Camattepoora have,—I am assured, been begun. Whetever Dr. Blaney's opinions, there are his statistics. I think they are incontrovertible; and have not been met. They are also supported by our Municipal Offical Reports. (See Report for 1881, p. 367; Id. for 1880, p 516; Id, for 1879, p. 474). Making due allowance for all causes, it is a matter for serious consideration that we should seek to inflict closed drains on localities which are very much more healthy than Kharatalao and the Fort.

I am told, we have sunk 17 Lacks. True, but why sink more and kill ourselves and our children. Look at London. My attention was pointedly drawn to the subject by a paragraph in the *Hindu Patriot* (February 11) in 1878, reporting the failure of certain large drainage works costing 5 *crores* of Rupees, as shown by the report of the Thames Conservators. But here is some further more recent evidence about London. It is afforded in a paper by the great sanitary authority Mr. Edwin Chadwick, C. B., read at the meeting of the Association for the promotion of Social Science held at Dublin, 1881, (pp. 10,11):—

"At our sanitary section of the Society of Arts, it was shown upon the testimony of practitioners of the highest experience, that full three-fourths of even the most expensively built new houses in London are badly drained. Those which happen to have good self-cleansing drains are joined on to a sewer, commonly a large new sewer of putrefactive deposit. In my Sanitary Report of 1842, I described such a sewer as the bulb of a retort charged with putrefactive matter; and the house-drain as the neck of the retort to carry the products of decomposition into the house. At the sanitary section of the Society of Arts, we got an examination made of the great sewer which passes from Victoria Street and receives the drainage of the Government Offices and of Downing Street. That sewer was found to contain about a foot deep of putrefying deposit. The flusher who examined the sewer, on putting his lamp to the mouths of the drains opening into the sewer found everywhere, from the direction of the flame, that the current of sewer-gas flowed steadily upwards into the grand new buildings, the public offices. But for the 'ventilation' of the sewer as the man called it, by means of the house drains, the gases

of putrefaction in the sewers would be so strong as to make them dangerous as they were inconvenient for the flushing men to work in when the time came for them to reduce the putrid accumumlation by flushing. Now as to the tests of this dilution of the sewage gas in offices by the receptivity of the occupants? Sir R. A. Cross has stated that when he first went to wash his hands in his office he was assailed by a very offensive smell on opening the plug. When he had sat for a time to do the work of his office, he found himself subject to low headache—the common effect of diluted sewer gas. This became so bad that he did as much work as he could at home. He stated in Parliament that he had determined to engage offices elsewhere for the safe transaction of his business had he remained in office. A member of the Government in the Local Government Board may bear testimony to greater suffering from the condition of the very spacious room assigned to him. In the Colonial Office there have been cases of fever, and two deaths from fever are ascribed to the defective state of this office. One friend, an officer there, was subject to an attack of an eruptive fever, also ascribed to it, which occasioned an absence of nine months from his office."

What did our *Times of India* say in 1879:—

"There may be a lesson for us in the Calcutta Statistics of dicease and in the Calcutta mortuary returns of the past quinquennial period. In 1871, the Sanitary Commissioner of Bengal was almost alone in raising his voice against the sewage scheme? . . . We have the unquestionable fact before us that both in Europe and in the tropics an increase of typhoid fever *has* followed the introduction of elaborate sewage arrangements. We have the fact, that the most palatial mansions of Europe *have* in consequence of defective sewage and defective water closets, proved deadly to their royal inhabitants. We have the fact that the escape of sewer gas into houses, *is* recognized as at least one of the causes, if not the principal cause of typhoid fever. We have the fact that natives are proverbially careless in the interior cleanliness, ventilation, and sanitation of their residences. Yet it is proposed to supply, at enormous cost, an apparatus for the generation of sewer gas, and apertures in the shape of water closets which certainty will never be kept in good order—for the delivery of the sewer gases into the houses! Granted that a well ventilated, well trapped, water closet, particularly in a well ventilated house, is not dangerous, is it possible that in a city such as Bombay these essentials can be maintained? The closets will get out of order, and, moreover, they will be the receptacle for all kinds of refuse, from old clothes to dead rats and cats. Then, the sluggish flow of the thick sewage liquid, through the necessarily level-laid pipes, will afford more than sufficient time for the formation of any and of every kind of gas which can be possibly formed from such material. If

Malabar Hill were the only district to be sewered, the natural fall would carry the material quickly away. In flat Bombay, notwithstanding the dictum of the savants that some very small number of feet fall in a mile is sufficient to carry off sewage, there is not sufficient fall to carry it off before it begins to putrify—not even when pumps are set to work at the exit. The consequence will be that the thick material will sink to the bottom of the sewers and *remain there* while the thinner fluid alone will proceed sluggishly towards the sea The seaside will not then be a savoury residence: the point from which the sea-breezes come will be tainted.

We all have faults of memory ; but the facts above given, and others which can be quoted in volumes will show you the dangers which beset us. There has been no volcanic change in Bombay since 1879. And the above facts are as applicable now as they were in 1878 and 1879.

As regards chimneys and shafts, a large forest of them will be enough to kill even vegetation for miles round.* And now, gentlemen, before I conclude, I will read to you the Bombay Government Resolution of 1870, sanctioning the drainage scheme approved by Mr. Scoble's Committee.

WATER SUPPLY.

Bombay Gazette, the 31st March 1870.

Report dated the 27th July 1869, of the Commission on the drainage and water supply of Bombay, with appendices.

Resolution.

Government concur with the Commission in rejecting the Shewla scheme. It does not appear to have been ascertained beyond a doubt, that as good a storage basin cannot be found in closer proximity to Bombay, nor are the details of the scheme sufficiently well considered. The amount of the outlay involved also puts it beyond the power of the Municipality for the present at least.

2. The Canery and Poway schemes would not give results commensurate with the outlay they would involve, and the construction of either would only be a half measure.

---

* See Mr. Chadwick's paper above quoted, page 12.

3. A very substantial addition to the Vehar Lake at an expenditure which is within the means of the Municipality might, however, be made by the execution of the Toolsee scheme, and Government concur with the Commission that this would be the best practicable arrangement.

4. It could only, however, be regarded as an interim expedient for it does not provide for the full quantity (15 gallons) of water per head for the number of people that now inhabit Bombay; and would, therefore, year by year, as the population increases, become more and more adequate: many years would, however, probably elapse before any practical inconvenience be felt and it is reasonable to suppose, in that interval not only will some suitable scheme for a substantial increase be devised, but that means will be forthcoming for carrying it out.

5. It is quite clear that, as a permanent arrangement, this city should not be left to depend on one source of supply, liable to suffer from insufficient rainfall in successive years, or destruction from accident to the impounding dams.

6. The risk of either contingency may not be great, but it does no doubt, exist, and therefore, the Municipality should lose no time in having the further investigation suggested by the Commission made, in view to the selection of a suitable site for another reservoir so that all may be ready for action as soon as means can be made available; in the mean time dams of the Vehar Lake should be strengthened, as recommended, and the question of another main from Vehar should be seriously considered.

7. The mode of distributing the present supply appears to be very faulty; of the 85,00,000 gallons delivered, only 21,53,474 gallons are accounted for, the remaining 63,63,525 gallons running away through private service pipes without check. Government concur, therefore, with the Commission that it would be advisable to supply meters in all practical cases, (it cannot always be done for want of pressure), and to provide small dipping wells throughout the native town, in the manner suggested by Mr. Blaney.

8. As regards the incedence of the cost of any work carried out with a view to the permanent increase of the water supply,

Government do not concur with the Commission that the work required may fairly be regarded as Imperial.

9. The taxpayers of India have already contributed Rs. 20,42,394 towards the water supply of the city of Bombay, and have lent the Municipality a further sum of Rs. 45,42,394 for the same purpose.

10. The work at Vehar now yields a gross revenue of about 4 lakhs, which is sufficient to provide for maintenance, pay interest on existing debts, and leave a margin sufficient to cover the interest on a moderate loan for the further extension of the work.

11. Under proper arrangement the water revenue should increase, and the Commissioner's proposal of levying a light water rate, from which houses supplied by meters would be exempted seems a reasonable one, and he should be requested to suggest the details for carrying out the plan.

DRAINAGE.

12. The Commission reject all the more elaborate schemes that have already been discussed, and advocate improvement of the Halalcore system for the removal of solid refuse, and night-soil; and they think that the drainage of the town of rain-water (and probably of refuge though this is not so clearly stated) should be effected by gravitation to Back Bay and the Harbour, and that as little drainage as possible should be allowed to find its way to the flats.

13. Government agree with the Commission that the time has not yet arrived for admitting night-soil into undergound sewers, and, to secure its proper disposal in that manner, not only would an abundant and constant water service be required, but it would necessitate the general introduction of water closets—an arrangement which neither the habits, nor the means of the people would admit of.

14. Such an arrangement means the rebuilding of the City of Bombay on a different plan to that now existing; and it is a fact that bears closely on the question, that the cost of an efficient and durable water closet would approximate to the value of many of the existing houses. Water closets are not yet universal in either

London or Paris, and it will probably be some generations before the people of this city, as a body, will be prepared to adopt them. If not thoroughly efficient, they would be worse than useless. If the Halalcore system be, for the present, adhered to, it only remains to get rid of as much of the rain-fall as possible, and preventing it from collecting on flats. The swamp that exists there during the early part of the cold weather would thus be somewhat reduced by improving the Love Grove out-fall, but could only be made altogether to disappear by the progress of the reclamation which is even now spreading steadily from Camateepoora, and will, it is hoped, recover the flats long before such conditions will arise as would render a system of underground sewers practicable.

15. Apart, therefore, from the sanitary question whether sewage could be safely utilized in this country, Government think there are good reasons for rejecting Captain Tulloch's and all underground sewage schemes, but in any case, it would not, as the Commission report, be wise to try so doubtful and perilous an experiment on so enormous and costly a scale.

16. The dry earth system is, of course, out of question for general application to a city of this magnitude. Government concur, therefore, generally with the Commission, and recommend an improved Halalcore system, and that strict attention should be directed to the adjustment and improvement of the existing surface drainage system, by which the water may be rapidly got rid of; but considering its position to windward of the inhabited part of the Island, and that it is a perfect *cul-de sac*, no drainage should be admitted into Back Bay.

17. The Fort drains should be completed and all house connections properly trapped. In the better classes of houses in the Fort, water-closets would be practicable, for the style of buildings is better than in the native town, but the difficulty would be sufficient water. It would also be advisable to establish a few public necessaries on the water-closet principle.

18. The Commission's recommendation as to the Carnac Bunder night-soil reservoir, and the necessity for the increased number of public necessaries, should be brought to the special attention of the Municipality.

19. The Commission should be thanked for their very practical report, which it is hoped, will put a question which of late has occupied so much public attention in Bombay, in its proper light, and perhaps show that, by the deliberate examination that has been made of gigantic, but crude, and insufficiently considered schemes, the community of this city may have been saved not only from a great financial error, but from something even worse.

(Signed) M. K. KENNEDY,
Colonel, R. E.,
Secretary to Government.

Our criticism, gentlemen, is to a certain extent necessarily destructive, for, we are not permitted to construct. It is like an old Indian school-boy story. A boy sows a seed; pours water on it; digs it up in two or three days; is disgusted to find it in a worse state than before; he buries it again, and repeats the process of watering and digging 3 or 4 times, and instead of growing, the thing tries to germinate and dies.

The same with our drainage. One drainage-committee is appointed. It works out a scheme. It is scarcely tried before it is laid aside. Another succeeds; its work shares the like fate. A third meets, and is nipped in the bud. At last Mr. Scoble's Commission is appointed under the best circumstances; it spends valuable time; elaborates a project; the Corporation approves of it; so does the Government of Bombay and the Government in England. —All cry *wah wah*. Something happens, and like the proverbial Mamletdar under the degenerate Indian Kings, the Commission comes to us riding with its face towards England and its back turned upon us, for its work is ignored. Within 10 years, Bombay is supposed to have advanced beyond London and Paris. We are supposed to have completed ever so many generations, spoken of in the last Resolution of 1870. Our houses are supposed to be all rebuilt; our habits changed; our old customs of centuries on which we are all so stiff have been washed away. At least this has been done on paper in our Secretariat, and at some meetings of our Corporation, for, upstarts a new commission; our drainage is sat upon; and regardless of history, regardless of every thing that

had passed before, the last report is adopted—apparently because it was the last, and thus our drainage difficulties are concluded on paper, and our battle for life and pure air and pure water begins. If such a drainage fails, and I say emphatically it deserves to fail, the only epitaph I can put on its tomb, would be that it died of the *nemesis* of excess.

APPENDIX A.

The communication referred to in Note (*b*) is as follows:—

"So they are determined to inflict Bombay with their new sewerage system. It will be a calamity all the more irresistible and terrible, as it would come in the fascinating form of a syren under the garb of Sanitary Reform and, backed as she would be by sanitary and scientific experts. This pet of theirs—the sewerage system—is believed by these experts to be the panacea for all the zymotic diseases human flesh is forced to become heir to by the very devices and contrivances of infatuated sanitary and scientific enthusiasts, devices and contrivances adopted in their vain attempts to find the Philosopher's stone—a ready method of removing all zymotic diseases at a swoop;—and the noiseless removal of night-soil without affecting the alfactory and optic nerves of man is one such.

"The sewerage system that Bombay is threatened with at present is for the removal of human excreta. Under ordinary circumstances, and in the natural course of things, human excreta are harmless. Indeed, in themselves, they are inocuous, in so far as some animals partake of them without any bad results, and some even thrive and fatten upon them. But all dead organic matter is very susceptible of chemical changes. The compounds composing the mass are extremely unstable; and their decomposition and the re-arrangement of the elements into new and more stable compounds takes place naturally. As the result of those changes, gases are generated—chief of them being carbonic acid and sulphuretted hydrogen. It is, however, not these gases, deleterious as they are when in quantities, that play such havoc with the human system.

"Putrifying and decomposing fæcal matter does indeed give rise to gases that are intensely pestilential; but this takes place, and can take place, under specially peculiar conditions only, and these conditions are of man's own making.

"When putrifactive fermentation of dead animal matter and especially of fæcal matter is carried on in pent-up places where there is no free access to air, and from which the rays of the sun are excluded, gases are generated, very virulent in their effects, upon living organisms of all kinds; and most so upon the human subject and these go under the distinctive appellation of sewer gases. Anything, therefore, that prevents free access of air and light to decaying and decomposing organic matter leads to the formation of sewer gases and sewers of all kinds do this preeminently; and in a climate like that of Bombay the external temperature materially accelerates the process. Once formed, it is difficult to get rid of these gases. That fæcal matter gives rise to sewer gases when air and light are excluded from them is proved by the fact that—association of ideas apart—you can walk to any distance alongside of a bhangy carrying on his head a basket full of this mattter, without being much annoyed by it, while try to accompany a night-soil cart of the Health Department on its way to the Carnac Bunder Station, you will find that despite the best efforts of the Health Department to screen the overpowering stench emitted by these carts by the lavish use of the disinfecting powder, it is simply impossible for you to accomplish the feat. Nor is it only to the immediate neighbourhood of the cart that the stench becomes confined. It will be found to stick to a place, and be perceived for minutes after the cart has left that place. I cannot understand this intense, this morbid anxiety on the part of the sanitarians to cause the removal of fæcal matter in a concealed stealthy way; nor can I understand how they can be so ignorant of the fact that the methods they employ for the removal of the matter are the things that give rise to these gases that they are so anxious to guard against. The monster is of their own creation. Strange that one should create a monster and then try heaven and earth to find the means of destroying him. The first is easy of accomplishment and is, as a matter of fact, brought about with the certainty of science and natural laws. Not so the latter, they must be tried and experimented with, quite uncertain about the result; and what a terrible significance has a failure in its instance! The gases shall be generated, but the hope of being able to prevent them from having access to teeming humanity is Utopian and futile. To keep sewer pipes perfectly clean and clear of the least particle of

fæcal matter passing through them is a practical impossibility, under the most favourable circumstances, and nothing short of it can be of any avail. Nothing that the best sanitary and engineering skill could devise, and money could supply, must have been wanting or spared in the construction of the sewer or drain of the house where some years ago the Prince of Wales and a companion slept, and where they contracted typhoid fever, from which the companion died, and the Prince of Wales himself providentially, very narrowly, escaped.

"A perfect sewer is an Utopian idea. Anything short of this has 'Death' stamped upon it. The least fæcal matter removed away from the oxidizing influences of air and light must produce sewer gases; and once produced, they are invincible. That the fæcal matter cannot be thoroughly removed away from the pipes is nothing very strange. Healthy fæces are solid, though moist; and containing as they do, a large quantity of mucous matter, they are very tenacious and sticky, and adhere firmly to things with which they come in contact. It is also insoluble in water, and unless thoroughly puddled, it cannot be made to take a liquid form, and this is quite impracticable.

"We have this exemplified in the privy boxes that are to be seen in some of the houses of Bombay. Whatever the quantity of water poured in them, there is no clearing the place. Nothing frees them from the stenches that emanate therefrom. Nor even does disinfecting powder prove of any greater avail. Sickness is the result, but regard to convenience forces them to use such privy boxes; and habit, after long usage, makes the thing *tolerable*.

"No amount of water, however freely used, will prevent this solid fæcal matter from collecting in the pipes and incrustating their inner surfaces. This is exemplified by the underground drains we have to carry away the sullage water of the houses. Now this sullage water consists of the waste and used water from houses, but for all that the drains are required to be opened 3 or 4 weeks to have their solid deposits removed; and often they are in such quantities as to choke up the drain and prevent the water from moving freely to and through it. If this be the state of things where water alone is supposed to have to be carried what could it be when solid, or at the best semi-liquid matter in tons shall have to pass through pipes

that have comparatively very small calibres. Practically, under no circumstances whatsoever can a sewer be a safe conveyance for fæcal matter, and it can only be tolerated as the lesser of two evils. But in the absence of the other evil there can be no comparison, and the Sanitary authorities shall have first to prove that the long practised method of removing fæcal matter by halalkhores is an evil in itself of a greater magnituade than that arising from the formation of sewer gases.

"In Bombay, in times gone by, there were two methods employed to get rid of this nuisance—collections in cesspools and removal by halalkhores. The first was in use very extensively, and there are places even now where they are to be met with. There was one thing strange about these cesspools; for notwithstanding that they existed in such numbers and there were wells in their closest proximity from which water was used for culinary as well as drinking purposes, and yet not a case of typhoid fever was seen in Bombay in those days of sanitary and hygienic ignorance, at least none that acute, attentive, careful, close observer, and Pathologist Dr. Morehead could detect; and that you have now plenty of what is supposed to be pure and good water, better sanitary arrangements—at all events more expensive ones—you have this fever prevailing all over Bombay and carrying away hundreds every week, of course under the technical appellation of "Remittent Fever"—as if for every single case of "Malarious Remittent Fever" there should not have been hundreds of cases of "Malarious Intermittent Fever," which are rarely seen now-a-days, not even a portion of what there used to be in former times.

"The halalkhore system stood in good need to our forefathers, and will not fail us if we but make a good use of it. There is no doubt that there are some things in connection with it that require to be removed or improved, and which can be done comparatively at the most trivial cost. But high-sounding, costly things, especially when backed by what pretends to be science and sanitation is the rage of the times, and may carry the day, unless closely watched and curbed in time.

"The sewerage system proposed for Bombay, indeed in *underground closed* sewerage system, whatever mu t be, and cannot fail

to be, a perfect failure, and to try it as an experiment would be morally culpable, seeing that the success or failure of it involves interests of the most sacred and awful import. It is a most unfortunate thing that some of the best efforts of the Sanitary Department of the Municipality have proved worse than failures, and noteably in the instance of the dust-boxes; where, instead of removing a nuisance, they have succeeded in accelerating and intensifying its effects, by collecting and heaping in a mass in almost close boxes an enormous quantity of the most horrible filth in the shape of decaying

---

The lecturer's Note.

The object of publishing these papers may be told in a few words. In 1877, Sir R. Temple's Commission reported in favour of a system of underground drainage carrying night-soil as suited for Bombay. This was in opposition to the conclusions arrived at by Government on the report of Mr. Scoble's Commission in 1869-70. Naturally enough people have been led to enquire into the subject, and the result is a widespread fear that the system which is now being forced on the people is full of danger. In order to throw light on the whole question a course of lectures was delivered by Dr. T. Blaney and two addresses by myself. At the last public Meeting, when I delivered my second address, the following resolution was passed:—

"That the following gentlemen be asked to form a Committee (with power to add to their number) for the purpose of raising subscriptions to defray the expenses of printing and circulating the lectures and addresses delivered by Dr. BLANEY and the Hon'ble Rao Saheb V. N. MANDLIK on the subject of the Drainage of Bombay and also for the purpose of adopting such measures as they may deem best calculated to draw the attention of the Municipal Corporation as well as the Governments of Bombay and India to the many sanitary and financial perils which, it is generally apprehended, will attend the introduction of the New Drainage Scheme in all its entirety in the Town of Bombay."

The Committee thus appointed having sanctioned the publication of the aforesaid lectures, they are now produced in pamphlet form, in order that those who are disposed to enquire into the matter, may have them in a compact shape for reference or for further investigation.

After these lectures were delivered, Dr. Blane gave one on the same subject in which he advised that night-soil should not be, for the present, thrown into the new sewers, but should be removed by sweepers as now; in other respects the new drains would, he seemed to say, clean the city better than before. After the delivery of this last lecture, I

animal and vegetable matter and rubbish of every kind imaginable placed here under the most favourable circumstances to putrify and

---

addressed the following letter to the *Bombay Gazette* which condenses all the points in dispute, and is, therefore, given in full in this place:—

February 1883.

To

THE EDITOR,

Bombay Gazette.

Sir,

I am sure the public of Bombay is much obliged to you for your article on the Local Drainage, published in your paper of the 19th January, 1883.

The issue, sir, is one of life and death, or I would not venture to trespass on your space and on the time of the public unnecessarily Since the time Sir Richard Temple assumed the office of the Governor of Bombay, the whole matter of drainage, like numbers of other things has been dealt with in such a high-handed manner that one must speak out at all hazards. As it is, I am constantly told by friends, European and Indian—"Why did you not say this before?" My reply is—"Yes, it was said before, but the voices were drowned." What Burke said a century ago is still true: "The harder Bhowani strikes, the greater is the ardour of her votaries."

When Dr. Blanc or any other gentleman rises on a future occasion to support the under-ground drainage of Bombay, as recommended by Surgeon-General Hunter's Commission, I will thank him to give us less rhetoric, and more of facts, of Chemistry, Geometry, and Logic. If he can answer the following questions, he will highly oblige the house-owners of Bombay, and the public of India:—

(1).—Is it not the fact that there *is* no under-ground drainage, carrying night-soil up to this hour in Dukerwady and Sonapur, as assumed by the Temple-Hunter Commission of 1877-78? (Page viii, paragraph 7e., clause 1st.)

(2).—If it be so (and that it is so is a fact which can be *seen* by anybody) is not the said wrong assumption utterly destructive of the whole Report of the said Commission, as based on that foundation, so far as the question of night-soil is concerned?

(3).—How are the facts and arguments as to the unsuitableness of such under-ground drainage so forcibly stated by Mr. Scoble's Commission in 1870, and approved of by the Government of the day, been so cavalierly set aside in 1879-80? On what evidence have they been so

give rise to fearfully pestilential gases and to abominable and unbearable stenches.

---

set aside?

(4).—How many generations have passed between 1870 and 1880?

(5).—Has Bombay been rebuilt during the last ten years? (See the Government Resolution of 31st March 1869, paragraphs 13 and 14).

(6).—Has the whole Native community or any appreciable portion thereof, given up their habits during the last ten years; and if so, where are the statistics of this wonderful conversion?

(7).—If 30 gallons per head of water are used in Calcutta, and are not considered sufficient, how many spare gallons have we got of sweet unfiltered water for flushing in Bombay?

(8).—Whatever the levels of Camateepura, has the Engineer's Department yet ascertained the actual velocity of the flow of sewage in Bombay on their own formulæ?

(9).—Have the levels been correctly examined and reported upon to the Corporation at any time?

(10).—What is called the first section comprises nearly the whole of the native town. Have the authorities considered the perils to which the city would be exposed in the event of any block or impediment preventing or checking the flow of sewage in any one quarter of the city from which 500,000 men would be exposed to danger? [One section of Paris only is being drained on Colonel Waring's plan] "as a trial work," and Bombay is not Paris].

(11).—How are the facts and experiments reported upon by the *Lancet* to be explained and provided against?

(12).—Who are the specialists whom Dr. Blanc and those who would extol underground sewage have consulted?

(13).—How are the arguments of Mr. Chadwick and the *Lancet* met in regard to syphons, shafts, and house-traps; and where have the experiments in reference to these been tried in India, or under the same economic and meteorological conditions as those of India?

I will not imitate the platitudes and figures of speech of Dr. Blanc even in regard to the *Bhangi* baskets. Those who live on hills may laugh at those on the plains; but I beg all public lecturers, and those who support them *pro* or *con*, to remember that strong or ornamental language is not fact, nor science, nor argument. We are now being lustily advised to leave nature and her help, and trust to art and her appliances. Our Government servants must remember that they are not free to criticize; they may praise but they dare not censure. Govern-

"This is sanitation as understood and is carried out in Bombay! It is sanitary reform with a vengeance! God only save us from it."

---

ment officials, weighted with their official responsibilities, can only support authority and fashion. Our own Health Officer was regularly mauled some years ago for venturing to speak in a manner which was distasteful to his official superiors, and the public knows, or ought to know, how various officials, high and low, were dealt with in the same era of high pressure and thorough-going egotism, the traces of which are not yet extinct. Unless Self-Government means mere bunkum and wind our Bombay Municipal Administration ought to be thoroughly untrammelled by the fetters of officialism. Incense of a certain sort "will be offered on every altar of power, whatever may be the divinity to whose worship the temple is dedicated." [Sir G. C. Lewis.] We must steer clear of such idolatry, or we shall be ruined.

We are still at the point indicated in the above remarks. The Corporation has sanctioned certain experiments; but has done nothing practical to see that they are made, and how they are made. Further moneys and measures have been also passed to be spent and worked in the same direction, but without any further enquiry. As a city, we are drifting into a second course of political torpor which is not a good augury for self-government.

V. N. MANDLIK.

31st May 1883.

THE CREMATORIUM QUESTION.

29th October, 1887.

The Hon. Rao Saheb V. N. Mandlik moved:—"That the Corporation is unable to approve of the scheme now before this meeting proposing the erection of a furnace for the cremation of the bodies of Hindoo out-castes and others, the proposed new mode of disposal of the dead not being in accordance with the religious rites and ceremonies enjoined on Hindoos, and inasmuch as the use of such an incinerator is generally regarded by the Hindoo community of Bombay with feelings of the utmost apprehension and alarm. That on the other hand the Corporation cordially approves of the principle of an annual contribution being made from the Municipal Fund of a liberal sum of money towards the cost of the cremation of the pauper and out-caste dead of the Hindoo community, provided that such bodies are disposed of on the simple *chita* or pyre in universal use throughout India. That the letter, dated 20th September last, from Messrs. Harkissandas Narotamdas and Damodar Thakersey Mulji withdrawing their assent to the report of the committee on this subject be recorded and that also the petitions against the erection of the proposed furnaces be recorded—(1) from the headmen of the Hindoo community and others, (2) from the Shastris of Bombay, and (3) from Pandit Gatoolalji Goswami and Dewkinandanacharayji and about 15,000 ratepayers." In support of his proposition the mover said that he did not propose to enter into the question of the cremation of Hindus. He might, however, say that the question was before the Municipal Commissioner of Bombay, Mr. Arthur Crawford, in 1868, and in his report on the subject the Commissioner said that "the Calcutta Municipal authorities had, after trial, condemned the incinerators for the cremation of the Hindoo dead." It was more than 10 years after that date, that the matter came again before this Corporation, on the Municipal Commissioner having received an application from a private company, Murgalia and Company, on the subject of the burning of the bodies of Hindoo paupers. In his letter to the Secretary to the Town Coun-

cil, Dr. Weir, who was then Acting Municipal Commissioner, said, he did not think it would be possible to introduce burning by crematories or other structures and he did not think it would be of much advantage to propose the erection of incinerating furnaces, because they were likely to meet with opposition from the Hindoo community, and he was doubtful of the advantages of crematoriums over the simple method used by the people of India. Since then, the speaker had written for further information to Calcutta, and the Secretary to the Calcutta Corporation had written to say that the incinerators were abandoned there, as they did not work satisfactorily, and as it was not found possible to burn bodies in accordance with the directions given in the Hindoo Scriptures, nor to burn them in such a way as to cause no nuisance to people residing in the neighbourhood. This was their experience. What the ideas of the native public, for whose benefit these structures would be erected were, had been already set forth in the petitions. The people objected to crematories in such large numbers that their case might fairly claim respectful attention at the hands of the Corporation. (Hear, hear.)

Dr. Blaney seconded the proposition.

Various amendments were moved to this. On *4th November, 1887*,

The Hon. Rao Saheb Mandlik replied. He said, as one of her Majesty's servants, he repelled the charge that those who were responsible for the opposition were showing disaffection, as indignantly as it was possible for any man to repel it. They were within their right as petitioners to the Corporation, and he was within his right as a member of that body, that right having been generously acknowledged by various speakers and warmly defended by his friend Dr. Blaney.

Colonel Merewether: Will you allow me to explain that I did not make any reference to such a statement as having come from the Rao Saheb?

The Rao Saheb, proceeding with his remarks, observed that the statement that one of the three petitions which had been presented was not that of the headmen of all *castes* was not justified. It had not been stated, as being from the heads of all *castes*, because as

most of the members of the Corporation would know that most of the Hindoos themselves could not correctly enumerate all the castes belonging to the community. He would not read the names attached to the petition, because many of them had been read on a previous occasion, but he would remind his hearers that the names of eight Corporators, several leading Justices of the Peace for Bombay, and others were attached to the petition. These were not men of "straw," but men who had a substantial stake in the Municipality. If such persons were to be attacked in the manner they had been, then no one was safe in Bombay in pleading his own cause either in the capacity of a Corporator or a petitioner. As to Mr. Gattulaljee whose name appeared in the second petition, some people might make light of him, but he (the speaker) would remind them that Mr. Gattulaljee came from the largest section of the community. Then there were more than sixty Shastrees—professors of Hindoo law—who had petitioned, and he begged that they might not be despised. He did not think the Government of India or the Government of Bombay would despise them. Against these petitions, however, there was one, and while he was prepared to treat the claim of every section of the community generously, he must say it was not right of certain people to throw sneers at a community which they had left and could not be said to represent. Speaking of the questions circulated by the committee of the Corporation amongst the community, he said that on the last occasion Mr. Javerilal had stated that they were drawn up by the Commissioner and had not been seen by the members of the committee.

Mr. Dosabhoy Framjee: Mr. Javerilal was quite wrong in saying that they were not submitted to the committee.

Mr. Javerilal: I did not say that they were not submitted, but I did say that they were not read.

Mr. Dosabhoy Framjee: They were submitted and read.

Mr. Javerilal: I say, no.

The Rao Saheb, continuing, said that although several questions had been circulated nobody had been asked if the crematorium was one which would be consonant to the Hindoo ideas. There was not a single question of the sort: it was assumed that there was to be

cremation. As to the assertion that iron was largely used at the Sonapore burning ground, he observed that sometimes four iron pillars were placed round the fire, but then the bodies did not come into contact with the pillars. Those posts or pillars were objected to by several *castes* and never used, while by others they were only used after they had undergone certain purificatory processes. Amongst other things which had been given as the cause of the objection to the new scheme was that "rivalry amongst the leaders of the Hindoo community had a great deal to do with it." This really astonished him (the speaker). Whatever others might do, he could say for himself that he was at one with nearly all the heads of the community. The absence of Sir Munguldas Nathoobhoy's name from the petition had been referred to. Well, he (the Rao Saheb), after having heard what was said to be Sir Munguldas's opinion, did not wait upon him in regard the subject, but now Sir Munguldas had written to a Gujarati newspaper, stating that the assertion that the Municipal Commissioner had undertaken the project with his approval was entirely false ; Alluding to the amendments, he pointed out that if the first part of Major Martin's amendment had not left everything so uncertain as it did he might have voted for it. As it was at present worded, it was the very sort of amendment which was calculated to create in the minds of the people—and they might call them the ignorant masses if they chose ; but those people had a belief which he asked the Corporation to respect by not interfering with the present system—a sort of doubt. In conclusion he said the question at issue was one which concerned the whole of the community, and therefore he hoped the Corporation in disposing of it would bear this fact in mind.

The Corporation then divided on Dr. Arnott's amendment, which met with only three supporters. Major Martin's amendment was then put, and carried by 18 votes to 16. A poll was demanded with the result that Major Martin's amendment was lost by a majority of one. Colonel Merewether's amendment was next put to the vote, and it was thrown out by an overwhelming majority. Eventually the Rao Saheb's motion was carried by 17 to 11.

LETTER ON ARTESIAN WELLS.

MUNICIPAL RECORD FOR 1884.

To

H. W. BARROW, Esq.,

Secretary, Town Council, and Clerk to the Municipal Corporation, Bombay.

SIR,—On the 10th August 1883, the Corporation passed the following Resolution in reference to the supply of water from artesian wells and other sources in the city of Bombay:—

"Mr. Dinshaw Manockiee Petit suggested that special inquiries should be made with regard to the possibility of providing the city with a system of artesian wells, such as the wells existing in Pondicherry, Paris, and other places. Mr. Petit pointed out that if a good and wholesome supply could thus be obtained in Bombay, the artesian well water could be delivered to the low-lying parts of the city; whilst the water thus saved to the Vehar and Tulsi low-lying districts could be utilized for the improvement of the supply to the higher districts.

"The Acting Municipal Commissioner undertook to refer this question to the Executive Engineer for report, and to ask Mr. Ollivant, the Commissioner, to make inquiries while in Europe as to the artesian well supply of Paris, and other places."

This Resolution was mainly based (so far as I can see upon the report of the Executive Engineer of the Municipality) founded on an extract from a paper by Dr. H. J. Carter on the Geology of Bombay, and another by Dr. Buist in the Transactions of the Bombay Geographical Society. So far as I can gather, Dr. Carter himself did not consider his paper by any means exhaustive; and as the Geological Department under the Government of India was not then so well organized as now, we are much better situated than Dr. Carter was, when he wrote his paper in 1852, (Journal B. B. R. A. Society, Vol. IV., pages 161-210). The Executive Engineer has given no referen-

ces ; but Dr. Carter's description seems to refer to ordinary wells (p. 201).

In a paper communicated by the Government of Bombay to the Geological Survey Record (Vol. XI., page 302) the discovery of submerged forests on the site of the Prince's Dock is noted, and the remarks made on that paper by Mr. Blanford show that depression of soil in Bombay has been taking place even until recent times. Dr. Buist writing between 1850-1852 complains that no records appear to have been kept of the different digging operations in the Island for more than a century; and it cannot be said by any means that we have made much progress in the collection of exact data in reference to artesian wells within the city. From the report on artesian borings in India published in Vol. XIV. of the records of the Geological Survey of India, it appears that boring experiments have succeeded in various places and have failed in others, and although they have not succeeded in Gogo and one or two other places in this Presidency I think the success or non-success after a few trials can hardly be said to be a satisfactory termination of the pursuit of such a great question. From the description of the artesian wells at Pondicherry given in Vol. 13, pp. 113 to 152 of the record of the Geological Survey of India, it appears that borings have had to be carried underground to a depth of more than 500 feet : and in Europe the amount of digging required appears to have been greater : (see Encyclopaedia Brittanica, Vol. II., 9th Edition, page 645). Thus it appears that they have had to bore to a depth of 1,798 feet near Paris; 1,878½ feet in Bavaria, and in other places to 2,900 feet in Paris. As the mechanical appliances are now in a more advanced state than they were even a few years ago, I think this Municipality ought to be prepared to spend a large sum of money on this account; for we have before us an ever-increasing expenditure on projects which cannot bear comparison with one or more artesian wells; and it is worth the while of our Municipality spending a reasonably large sum of money for this purpose under proper guidance, either in the Island or as close thereto as possible.—I have, &c.,

V. N. MANDLIK.

In accordance with notice of motion, it was proposed by the Hon'ble Rao Saheb Vishvanath Narayan Mandlik—

" That the Town Council be requested to obtain the sanction of

the Corporation to the expenditure of a sum not exceeding Rs. 10,000, from Surplus Cash Balance, to provide for the cost of making a series of experiments with artesian wells in various parts of the city of Bombay."

Investigation was ordered.

SELECT SPEECHES AND MINUTES

IN THE

BOMBAY LEGISLATIVE COUNCIL.

THE HEREDITARY OFFICERS' BILL

15th October 1874.

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK—Sir,—I do not wish to detain the Council, but after what the Honourable Mr. Chapman has said, I think it right to express my opinion upon the measure. I consider many of the provisions in this new law to be improvements; but I am not so hopeful regarding others, which I will specify in order that the action of the Executive officers entrusted with carrying out this law may be more cautious, and that they may be more anxious to secure the objects which the Legislature had in view in framing it. When the Bill was being considered in detail I differed, as I do now, from the policy of alienations which is now contained in it. I think that the common law in regard to alienations was for the sale and mortgage of watans with the sanction of the ruling power, during the time of the Peishwas. The Elphinstone Code was more rigid and did not permit of alienations. But a loose practice sprung up and having gone on for thirty years, I defer to the opinions of those on whose advice the present provisions of the law have been framed. Regarding the recognition of adoption, the present law is an improvement upon the old practice, and it will prove entirely in conformity with the laws of the country generally. Regarding representative watandars, notwithstanding the great care that has been bestowed upon this part of the Bill, and notwithstanding the elective principle introduced by the Honourable Colonel Anderson, I think there is still great room left for improvements which may possibly be suggested by further administrative experience. I hope we may yet see our way to throwing more life into watans in the direction indicated by the Honourable Colonel Anderson's amend-

ments. At present, if I may say so, most of the watans are in a fair way of going through a process tending to gradual petrifaction. As to the question of joint responsibilities in watans, I am sorry that I stand in a minority in opposing the theory that one man should be held responsible for the deeds of another over whom he may have no control whatever. Education has now spread, and is still spreading over the Presidency, and it may take away many watandars from the actual scene of their watans to places where they may be educated, and where they may go in search of employment. Surely the principle of joint responsibility, if it operated to depriving these people of their interest in their watan, would not be a just one. It is no argument that because this is an old principle which we are now re-enacting, therefore it ought to stand, and I hope circumstances may yet induce this Council to modify their opinions on the subject. Giving information to Government is no doubt the duty of all village officers, and if it was in respect of political offences I would say, let there be joint responsibility in watans; but seeing that His Excellency has introduced a change in the Bill, by which offences are not to be tried at the Magistrate's Court, but at Courts of Session, I hope there will yet be further concessions in favour of the watandars. As to Sections 18, 19, 20, and 21, defining the rights and duties of village officers and the way they ought to be remunerated, I think they contain a very great innovation. I was only restrained from pressing my opposition to a division by the distinct declaration from the Executive members of Government present, that the principle *quieta non moveri* would regulate the operations of the officers entrusted with the carrying out of the Bill. If it is only a few districts in which the crime of cattle poisoning prevails, I hope it will be a point of careful consideration before the sections I have quoted are carried into execution in other districts. The provisions in Part X., referring to the duties which are to be laid down and the registers to be prepared about mhars, are also an innovation which will require to be very carefully worked. I omitted to make one remark upon the last occasion that the Honourable Mr. Rogers withdrew two sections from the Bill affecting jurisdiction. I did not move any amendment then, because there was a decision reported in the sixth volume of the High Court Reports before the present Bombay High Court Act was passed; and I was not therefore prepared to say

how far the authority of this Council, as interpreted by the old laws of the High Court, would be affected under the new laws. We have been told that those provisions would be considered in another Bill elsewhere. It may be so. But we are now passing exact and rigid laws giving large powers to the executive officers of Government. I am quite prepared to support the passing of such laws, when their necessity is proved. But when such laws are passed, I would hold executive officers strictly bound to carry them out; and when they are transgressed, the ordinary tribunals of the land should have the right to adjudge about such transgressions, so that the meanest subject of Her Majesty may be able to say that every wrong has a remedy.

The Bill was passed.

THE BOMBAY REVENUE OFFICERS & LAND REVENUE CODE BILL

No 1 of 1875.

20th January 1875.

MOTION BY THE HON'BLE MR. CHAPMAN FOR FIRST READING.

The Honourable Rao Saheb VISHVANATH NARAYEN MANDLIK—Your Excellency—I did not intend to make any lengthy remarks upon the honourable member's motion; but I think it necessary to make a few remarks on the principal points raised by the Bill, because of the desire which has been expressed to dispose of it rapidly. I have not yet had time to examine the Bill carefully, or even to go through the whole of it, and compare it with the laws as they now stand. Some of the definitions will require to be very carefully looked into, and the whole must be deliberately considered; but at present I do not propose to say anything regarding the first five chapters. The third chapter we have recently discussed in Poona, and Chapters 2, 4 and 5 substantially relate to official organization, the discussion on which will most properly take place in Select Committee, where (since we have been assured by those who are particularly concerned in the jurisdiction and duties referred to in the Bill that it has already been carefully examined) doubtless all the necessary modifications will be effected. But at Chapter VI. I think we come upon material for discussion of a very important character. I think that this Bill will entirely change the position of the landlords of this Presidency as compared with the position they occupied under Regulation XVII. of 1827. That regulation simply introduced rules regarding assessment and for the guidance of revenue officers in respect of the administration of land revenue. But the present Bill goes much further. It seeks to enact in positive terms laws regarding a certain description of landlords, which I apprehend, have now been proposed to be promulgated for the first time in India. Judging from the labour I have already had in going through the first draft of this Bill, I do say that the changes now sought to be introduced call for the most earnest and deliberate consideration. If the Select Committee, in

the course of their deliberations refer to the recent decisions of the Lords of the Privy Council on several Madras cases relating to the land law in that Presidency, they will probably come to the conclusion that it will be a matter of their most serious consideration how far positive enactments of the kind proposed in this measure can safely be made when there is no necessity for them. If I saw it was necessary to promulgate a new law, I would say, by all means do so; but there is a positive mischief done by making positive declarations when they are not needed. I am simply repeating the sentiments of the late Court of Directors when I urge that we ought to avoid making new laws unless we are convinced of some proved mischief existing in the body politic. In regard to forest rights, I think it will be found that the sections upon that subject contained in the Bill require considerable improvement. Forest rights differ all over this Presidency, and no definite law can be applied to them. I may take the liberty of saying that even the decisions of the Secretary of State in regard to the forests of the three Presidencies, as published in the Blue-books up to 1871, must affect considerably the provisions sought to be passed in this Bill. I would ask that some considerable time be granted for the consideration of the propositions contained in this Bill, for it is impossible to understand its important bearings in a brief period such as is alluded to by the Honourable Mr. Chapman. Regarding roadside trees, I think that some distinction will have to be made between trees planted by private individuals in their own properties adjoining highways and trees which are *bona fide* roadside public trees. It must also be borne in mind that people in this country have been in the habit of planting road-side trees as an act of piety, and scores of miles of roads have been planted in this way, an instance of which is the old road between Satara and Poona. I shall now say a few words with regard to tenant right. I am at present preparing a summary of the whole law in India upon the subject as it has existed during the last seventy-five years, and I have not yet had time to complete my labours. I think, however, so far as I am able to judge at present, that the sections introduced in this Bill will effect a radical change in the position of land-owners, and unless the Select Committee are satisfied that such a change is required on general grounds, I trust they will see their way to specify the particular cases in reference to which such a

positive enactment is required. At present it is made applicable to the whole of the tenantry in this Presidency—a state of matters which may induce a great deal of litigation just as the recent introduction of a similar section in the Punjab has been proved to cause more law-suits than existed before. The distinction between ancient tenants and new tenants is one which is well known, but unfortunately I think it is one in regard to which more mistakes have been committed than in the case of any other vexed question I know of. Proprietory right, we are told under this section, is to be distinguished from a right to increase rents, but I think that provision requires modification, and I hope the Select Committee will make the necessary alterations in order to make the intentions of the sections unmistakable. At the same time I think the section will be found to be useless innovation in view of some possible contingencies which this section may provoke, but which I cannot think will arise otherwise within the next fifty years. As to the illustration about the sale of lands in Dharwar, a more unfortunate illustration could not have been given, and in my opinion it would have quite as reasonable to cite the Bombay share mania as a standard of ordinary commercial enterprise in Bombay. In all excited periods, exceptional circumstances do occur, but as these do not represent the usual state of matters, it would be absurd to introduce general legislation because of those exceptional circumstances. In my opinion the sales of land at Dharwar was such an exceptional case, and therefore no legislation regarding the tenantry founded on that unusual solitary instance is requisite. In regard to the Summary Settlement Acts being embodied in this Code, I must say that I hope in Select Committee it will be found advisable not to incorporate those Inam Acts into this Code but leave them aside altogether. It ought to be considered as a matter of principle to terminate these summary enquiries as quick as possible, and relieve the State from its connection with the Inam Acts. As has been done in Madras, the enquiry being completed, a sort of Inam enfranchisment Act should be passed as soon as possible so as to restore the status of those property-holders. Regarding surveys, the Statement of Objects and Reasons says that they were carried on under departmental orders up to 1865, when they required to be legalized by an express law. Now, I think it is erroneous to suppose that any special legislation was required in

that year. What was ignored in that and previous years, was the fact that in this Presidency there existed, and do now exist, not one or two but many tenures. I take it that the original Survey Act was intended simply for one class of tenures, viz., those above the ghauts; and when the provisions of it were introduced into districts where different kinds of tenures prevailed, it is no wonder that they were found to be defective. The section to which the Honourable Mr. Rogers has drawn attention refers to one of these kinds of tenures and by no means a very important kind of tenure, considering that there are nearly eight districts in Gujarat and the Konkan in which tenures prevail different from those of the Deccan. I think that section 190 will really require great attention and, possibly, some essential modifications. The Select Committee should also consider how far the local fund provisions should be worked in the case of Summary Settlement holdings. There have been two cases in Tanna where the levy of enhanced assessment has been resisted under the plea that the Summary Settlements made by the State were a settlement once for all. I think that that contention is to a certain extent well founded, but I should still hope that the original settlements will be taken for what they were intended; and that even if there is a small sacrifice of revenue involved, the first settlement will be made the final settlement, so that it may not be said there has been any breach of good faith as regards these original settlements. Our attention has been drawn to Section 224 regarding the land revenue. I entirely agree with that and the other corresponding sections. I do not object to what is proposed regarding appeals. In conclusion, I beg to state that if I have the honour to be placed upon the Select Committee, I shall do all I can to expedite their labours; but, we must have ample time, and I repeat that the Select Committee cannot be too cautious as to how they deal with a measure of so much importance as the Bill now introduced.

PRELIMINARY MINUTE ON THE LAND REVENUE BILL.

These papers have been lying with me, for more than a week, as my illness during the last month, had thrown my other pressing work into arrears, which I had to bring up before I could take in hand current duties.

I agree with the Hon'ble Mr. Gibbs that it would be better to examine the code section by section, or at least such portions of it as we are generally agreed upon. But I had understood from the Hon'ble Mr. Chapman that a report of the kind of which we have a draft before us, was all that was required as a preliminary report before the work of translation could be commenced.

I regret I cannot sign the draft as it now stands. As the Under-Secretary has stated, this draft was brought ready for adoption, before we met last in committee on the bill. And it might just as well have been written without any discussion at all—save that of the headings of the various chapters.

I cannot sign the draft because I do not approve of the scope of various portions of the bill to which I drew the attention of the Hon'ble member in charge in committee. Some of the provisions now introduced, seek simply to effect changes, and, as it strikes me unnecessary and violent changes in the existing law. I have stated in committee what those changes are: but there has been no discussion. I oppose also the retention of the Inam acts in this code, and the Hon'ble Colonel Anderson stated before he left, that he was also opposed to their retention. The other members have not expressed their views, *pro* or *con*, and yet the present report is so worded that it is likely to mislead. I approve of the principle of chapters 2, 3, 4, 5, 11, 12, 13, 14, and 15, and these may be discussed and settled in detail, section by section, without much interfering with other parts of the code. They relate to the consolidation and better arrangement of the laws regulating the constitution of the Revenue Department, the jurisdiction and powers of the several grades of revenue officers, the realization of the land revenue, the procedure of revenue officers, appeals and revisions, and miscellaneous provisions. I am prepared to affirm the principle of the above portions, and discuss their details immediately, before the work of translation begins. But in regard to others, I must have more information and ampler time for consideration and discussion. I have not yet had the file of opinions on the draft code, nor the Forest correspondence for which I had asked the Hon'ble Mr. Chapman at the last two sittings.

(Sd.) VISHVANATH N. MANDLIK,

15-3-75.

THE ROAD TOLLS BILL No. 3 OF 1875.

23rd September 1875.

(The Hon'ble Major-General Kennedy moves the first reading.)

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK said he had carefully read the discussions which had taken place on this Bill when it was previously before the Council, and also those which had taken place upon it since. It was no doubt correct to say that this Bill was now, so to speak, coming only technically before the Council, because of a certain error for which, perhaps, this Council was scarcely responsible. But at the same time, since the responsibility now rested with the Council of passing the Bill in its present form, he thought it right to say that there were several matters in it to which he entertained very grave objections. He objected, in the first place, to Section 2, which was a sort of retrospective section—the Legislative remedy for such errors as this section sought to cure. In the next section he objected to lines 8 and 9—that is to say, he thought it advisable that the funds which had been expended on making roads under Act III. of 1869 should not be made the cause of again taxing the people by levying tolls upon these very roads a second time. He understood that it was difficult to make a clear distinction between provincial roads and local funds roads, and also that there was a scarcity of funds for roads; but his objections were, first of all, to tolls in general as a source of revenue, and in the next place, to tolls being placed too near each other. In other countries there might be tolls every six or eight miles; but he thought that that was no justification of repeating what he considered an error in any revenue administration. He would pay double the amounts laid down in the schedule, but it was not these amounts that people feared; it was having to pay them so often. Between Poladpur (or rather Kineshvar) and Nagotna there were five tolls, and moreover there were municipal tolls. Now, that was a state of things which should be guarded against in this country, where it is not so much the amount to be paid as the number of times it was required to be paid which requires to be seriously considered. As regards taxing foot

passengers, he noticed that the Council had actually gone beyond Act VIII. of 1851; but as the present Bill was in accord with the Act of the Government of India (Act XV. of 1864), it might be assumed that the members of this Council were legislating in the footsteps of the higher Legislature. But in his opinion this Council was to a certain extent an independent Legislature, and except in those cases where taxes on foot passengers would be justifiable—such as in the case of bridges over navigable rivers where people had formerly to pay ferries—he did not think a foot passenger's tax should be sanctioned by the Council. It might be said that there was power reserved to the Executive Government to exempt persons, and that as a matter of fact no tax upon foot passengers was levied except at Matheran and some other places, but here the law was going to be entered on the statute book, and if it was not necessary, he did not see why the Council ought again to legalise it.

THE MAMLATDARS' COURTS BILL No. 5 OF 1875.

(The Hon'ble Mr. Rogers moves the first reading.)

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK thought that the Mamlatdars' Act should now be amended thoroughly, so that its procedure might, as far as possiule, be on a par with the amended procedure which was being devised for the Courts of Civil Judicature. Questions as to possession were often, he had found, decided by Mamlatdars in a way which might be amusing to themselves, but which was certainly not amusing to the people who had to suffer. He also hoped that Kulkarnies and Patels would not be permitted to have anything to do with the execution of decrees, which ought to be carried out, as they had been hitherto, by the Mamlatdars' establishment. Local feeling in village communities was in itself a sufficient reason why village officers should not be asked to carry out the Mamlatdars' decrees. If necessary, one or more bailiffs should be employed, and the necessary fees should be charged to suitors.

THE ROAD TOLLS BILL No. 3 OF 1875.

30th September 1875.

(The Hon'ble Major General Kennedy moves thesecond reading.)

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK—Your Excellency—I had not intended to speak upon the second reading of the Bill, because I understood, although my observations were directed to the inadvisability of tolls as a rule, that this Bill came before us as it were technically, and therefore it would be too late now, as the Hon'ble Major-General Kennedy has pointed out, to go back upon what has already been considered and passed. However, I think that in the case of *post facto* provisions of law, it ought to be a general rule as far as possible that in Acts relating to the revenue or to abridge contracts care should be taken to pass as few retrospective sections as possible. On that point I fear I should not consider it advisable to recede from what I hold to be the proper law for all countries and for all times. In the case of the present Bill, I think it has been agreed that the sanction of the Government of India to tolls has been in existence for a considerable time past and that although by some mistake the Government of India's law was not extended to this Presidency, yet as the officers in this Presidency had been acting *bona fide* upon what they believed to be the law, it was desirable that the possibility of law-suits should be avoided. I shall not vote for the second section of the Bill, nor shall I vote against the second reading of this Bill ; but in the course of the second reading I shall have several amendments to propose.

* * *

The Honourable Rao Saheb VISHVANATH NARAYAK MANDLIK said he would not vote on the section (2) at all. He was opposed to retrospective laws on principle : such laws were opposed to the very constitution of some states. And although such may not be the statutary law of India, all such acts which sought to abridge contracts or impose *post facta* burdens on the people ought to be avoided. He could not therefore vote for the clause. But he would

not vote against it; because all the officers who were acting under the vetoed Act, and the previous Acts of the Council of India, have been acting *bona fide* and require to be protected under the particular circumstances of the Bill.

(The Hon'ble Raosaheb proposes an amendment upon Sec. 3 in order to prevent people who have already contributed to Local Funds from being compelled to pay Tolls on local roads.)

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK—I wish to propose an amendment upon section III. with reference to the tolls levied upon roads made entirely from local funds. In legislative matters I think we must, to a certain extent, go upon theory, for that is simply a rule derived from practical experience. When I see what the experience of the Bombay Government has been in this matter, I am somewhat strengthened in the course which I wish to suggest upon the present occasion. In the last general report for the Bombay Presidency there is a passage in a minute recorded by His Excellency the President to which I wish to refer. His Excellency says:—"The following general conclusions may be drawn from the replies received from the Revenue Commissioners, Collectors, Assistants, &c., to the circular letter No. 3821, dated the 20th August:—Tolls are unpopular, more particularly with those who pay the one-anna cess and therefore consider themselves entitled to the use of the roads without further charge."

His Excellency the PRESIDENT—That merely recites the fact that tolls were unpopular.

The Honourable RAO SAHEB—That is all I wish to point out What we have to examine here is whether the unpopularity in this case arises from a disposition somewhat common to humanity to avoid one's own burdens and place them on the shoulders of other people, or whether it is a just unpopularity founded upon the course which has been pursued by the Government. Now, I submit, that those who pay one-anna cess upon roads have a certain right to expect improvements upon these roads for the accommodation of their traffic without being subjected to additional taxation. Perhaps the case is different in regard to imperial roads made from the general revenues of the empire over navigable rivers or over ghauts

or over very bad tracts of country which but for these roads would be dangerous to carts and animals ; but when we talk of the necessary improvements within the local area of districts, the means of those who pay local funds ought to be taken into consideration before tolls are imposed. These means are determined by the proceeds of the road and school tax, and it is not the absolute means of communications but the relative means of communication which should be considered by the local funds department. However correct it may appear to be, that if a man uses a road he ought to pay something for that convenience, yet when a man does already pay taxes for the purpose of making the road, it is not reasonable to tax him over again for the same convenience—namely, by compelling him to pay another tax for using the self-same roads. I hope that the country will be still further developed by roads, but at the same time I think there is a danger in spreading taxes over too many sources, and I think it would be more conducive to the general interests of the country if we had fewer of these tolls. My position is this—that if it can be shown that a man is using a road wholly or partially constructed from imperial revenues he might be made to pay tolls, but in the case of absolute local funds roads, the one-anna cess, which he has already paid, ought to suffice. I, therefore, beg to propose that the words "wholly or partially" be inserted between the words "repaired" and "at" in line 7, and that the words in lines 8 and 9 "or from funds collected under the provisions of Bombay Act III. of 1869," be omitted.

(In replying to the debate the speaker said.)

The Honourable Rao Saheb.—I regret that I shall have to repeat one or two things that I have already said. The question really is, what are necessary local improvements ? It may be that to cover a whole district with a network of roads might be a very necessary improvement ; but the word necessary is ambiguous. I do not say that many roads are not necessary in this sense, that positively speaking they would be improvements ; but we must consider all improvements relatively, *i. e.*, having regard to the means of the people who are to be taxed for making them. And I say, further, that the means to effect such improvements should be the local funds. I am entirely distinguishing between provincial roads, and

imperial roads, and I do say that the case of a man who pays a tax for making a road is very different from that of a man who is using a road made simply from that fund. The objection made by the Honourable Mr. Rogers will not practically arise, because all I propose is that the general public should get the advantages for which a portion of the public has already paid by means of contributions to the local rates. If, as is hoped, revenue improves under the new survey administration, there may be a large increase in the local funds; but until there is such improvement., we ought not to carry out schemes beyond the means of people in a district. We ought to look to the capacity of the people more than we do, and in the meantime I hope that the argument that the general public will derive benefits from the roads will not be permitted to weigh against the injustice of taxing a man twice for the same thing. The Honourable Colonel Anderson asked, who pays the rates? Although this is a great economical question, I think it would not be quite satisfactory to discuss it in a Bill for the levying of tolls. It may be quite true that many of the agriculturist's charges would fall upon the consumer, but at the same time many of these mofussil tolls will fall directly upon those who use them. The poorer districts do not export in large quantities, and yet the people have to pay three or four tolls. There ought to be roads, but still we must keep within the means of the people.

Lost.

It was resolved on his motion that foot-passengers should be taxed only on bridges or heavy ghaut roads, with the approval of Government.

MINUTE OF DISSENT ON THE CITIES SURVEY BILL No. 4 OF 1876.

I regret I cannot agree to Section 10 B, as now proposed by the majority of members of the Committee. I object to the insertion of the following words in this section:—"And arrears of sanad-fees, which were payable before the passing of this Act, under Section 10 of Bombay Act IV. of 1868." There is no provision in Act IV. of 1868 which would make its working retrospective. In the case of a purely Revenue Act, I cannot agree to pass a retrospective provision which would affect and change vested rights in city lands. In some countries such statutes would be judicially held unconstitutional, and therefore inoperative and void. (1 Kent's Commentaries, 511, (Tenth Edition), and the cases in note *d*). We have no constitution laid down for our guidance. But the principles which underlie all such legislation are the same; and, in my opinion, there is no case made out for our enacting this *ex post facto* provision in this Bill. If this were a remedial statute for covering defects or for advancing remedies, I should have voted otherwise.

(Signed). VISHVANATH NARAYAN MANDLIK.

The Bill was withdrawn.

THE FERRIES ACT AMENDMENT BILL No. 6 OF 1875.

4th January 1876.

Mr. Gibbs moves the first reading.

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK said—I think, so far as the Bill proposes to give Government the power to regulate ferries of the kind mentioned in this Bill, it will be an improvement, and so far I would support its introduction. But when the Bill comes before the Council, Section 4 will require very careful consideration. There is a large trade between Bombay and the ports mentioned in this Bill, particularly Bankot and Rewadánda, and Mahad too, being connected with the ferry system, and this will be unduly, and I think injudiciously, affected by the Bill. The coasting trade cannot be all provided for by the ferries, and it will require to be protected. The ferry to Bankot does not ply at all seasons of the year. I think it would be well to have placed before the Council a Statement of the trade of places affected by this Bill before the Council proceeds to discuss the Bill in detail. Excepting in that respect I have not the slightest objection to the Bill, and the other sections are doubtless intended to explain and make amendments that are needed.

The Honourable Mr. ROGERS said—With regard to the honourable member's remarks, I may say that these ferries are principally for the convenience of passengers. The immediate necessity for this Bill has arisen from the circumstances of the Bombay and Mahad ferry, with regard to which I am informed that the steamer which plies to Bankot has already proved of great advantage to passengers from the Ratnagiri District, who are saved a long land march to Dharamtar and reach Bombay cheaply and safely.

The Honourable Major-General KENNEDY—There is a great force in what has fallen from the honourable member; but the question he alludes to is one that should be settled independently of this Bill.

The Honourable Mr. GIBBS—I think so.

The Honourable VISHVANATH NARAYAN MANDLIK—That is what I have said, but I think the Council should have before it

some statement or return of the trade between Bankot and Mahad and Bombay. Perhaps we may insert some provision which, whilst preserving the convenience to passengers, we might avoid inconveniencing what is also of great importance, viz., the large carrying trade. I want to make some proviso by which we will be able to carry out the intention of the Bill, which is to have some control over the public ferries, without at the same time interfering with our coasting trade, and the large interests connected therewith.

THE CITY OF BOMBAY LAND REVENUE BILL No. 2 OF 1875.

Mr. Revenseroft moves the second reading.

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK—There is one remark that I should like to make, as being a party to the report. I may say that I have contributed my quota to the discussion in the Committe, where I think we very carefully considered those portions that have been touched upon by the Honourable Messrs. Ravenscroft and Rogers. It is in regard to the *prima facie* basis on which encroachments are to be decided that I wish to make a remark. I think in adopting this section as it now stands we have given the Collector of Bombay a basis which will serve in future for his guidance; and for my own part, having reason to believe that this city survey was very carefully made, I have considered it only fair that this should be the basis for deciding what may be in fact titles to land in Bombay. In the future, this will be the *prima facie* evidence on which the the Collector will either eject a party or on which he may be sued for having ejected a person in the High Court, or elsewhere.

THE MAMLATDAR'S COURTS BILL No. 5 OF 1876.

5th January 1876.

Mr. Rogers moves the second reading.

The Honourable RAO SAHEB—The only point I wish to refer to is that of the execution of the Malatdars' decrees, and the question that was considered by the Select Committee whether special officers should be appointed for that purpose, or whether their execution should be entrusted to the village authorities. With reference to the statistics quoted by the learned Advocate General, the only point that occurs to me is to show how misleading they can be, for though the number of the decrees may have gone on increasing, their effect has not been proportionate. At present there is no machinery for enforcing them.

The Honourable the ADVOCATE GENERAL—Then are they so many pieces of waste-paper?

The Honourable RAO SAHEB—It is a fact that at present a a man frequently gets a Mamlatdar's order, and there is no execution, With regard to the question of costs, I must say I think if the Mamlatdar's Courts are to be retained, they ought to have power to award costs. As to placing the execution of the decrees in the hands of the village officers, I think they have quite plenty of work to do already. The Civil Court decrees are executed by a separate establishment; and I see no reason why the Mamlatdar's decrees should not be executed in precisely the same manner. I think this Council ought to see the very best safe-guards against these decrees being misused, and the only way to provide against that is to entrust their execution to a separate establisbment, which ought to be paid for by those who make use of it. I shall support any scale of fees which may be thought necessary to sanction for this purpose, and I should strongly urge it for the consideration of the Council if possible to avoid entrusting the work to the village authorities.

THE MAMLATDAR'S COURTS BILL

7th January 1876.

The Honourable Rao Saheb Vishvanath Narayan Mandlik—I made some remarks at starting on this subject, and I think if we are going to improve the Mamlatdar's Courts, we ought particularly to consider what the effect of the decrees will be. I think there are several very serious objections to their being entrusted to the village officers, who might be parties to suit. Neither should the decrees be left to the parties themselves independently, though there are many considerations why the patels might be made to act as a check on the special bailiffs. That the decrees should not be entrusted altogether to the parties themselves seems to me a matter of great importance. With regard to the village officers, first of all they would not be specially paid agents, and they are already a hard-worked and underpaid class, as has been clearly acknowledged by Government. Again, they might be dealing largely with land, &c., in their villages, and might have to act as bailiffs in cases in which they were themselves concerned. The duties they have to perform are laid down very definitely in Regulation 16 of 1827, Sections 21 and 22. Nearly everything in the whole village economy has to be done by the Patel, from keeping the land registers down to showing numerous civilities to travellers. Now I submit it is of the last importance that an overworked and underpaid officer like that, and also one who may be the owner of land himself and may be a party to the decree he has to execute, should have nothing to do with the execution of decrees. There would be little or no check on him, but in the case of a bailiff coming from the Mamlatdar's Courts, the Patel will act as a check upon him, as he does on the bailiffs of the civil courts. In all decrees as to land at present, the Patels are required to attend all sales, so that they may act as a check, and that is a proper office for them to serve. I don't see, if parties wish to get their decrees executed, why they should not be made to pay to keep one or more bailiffs to each court for that purpose. If the number of suits increases, as we see it has been doing, it is of the last importance that this should be carried out at once, because as

the business increases the number of bailiffs may be increased, but the number of Patels cannot be increased. I therefore submit it for the consideration of the Council that the Mamlatdars should have power to have their decrees executed in such manner as they may deem fit. I think that will meet the matter.

THE MAMLATDAR'S COURTS BILL

23rd Mareh 1876.

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK:—I wish to call the attention of the Council to clause 2 of Section 3. The words as they stand at present are :—"The words 'plaintiff' and 'defendant' shall include the recognised agents of a plaintiff or defendant, as defined in section 17 of the Code of Civil Procedure (Act VIII. of 1859)." Since this Bill was before the Council a case has been before the High Court, from the published proceedings regarding which it appears that the provisions of this section (which, I believe, appeared in a similar form in the old Act,) are not properly understood, or, if they are understood, are not at any rate, properly carried out. There is a class of practitioners who practise in some of the Criminal Courts, and who also try to practise in the Mamlatdar's Courts, and who are known by the name of Mukhtyars. These are a class of men who were at one time called Revenue agents. The Revenue agents ceased to exist after the repeal of certain provisions of Act XVI. of 1838, in 1866, by this Council, but the Mukhtyars still exist in some parts of the Presidency; and I believe the provisions of this clause are intended to prevent that class of persons practising in the Mamlatdar's Court. They are a class of men who are subject to no professional restrictions. In any case there is no guarantee either of professional qualifications, of social position, or of general character. In the particular case I refer to, a Mukhtyar attempted to bring a suit in a Mamlatdar's Court, and made away with two rupees that were entrusted to him for that purpose; a criminal prosecution arose out of those two rupees, and the Mamlatdar was eventually sued by the Mukhtyar for damages at the sum of Rs. 2,000. The case was tried by the District Judge of Tanna, and subsequently came up in appeal before the High Court, where the Mamlatdar succeeded in defending himself against the attack of the Mukhtyar. I noticed this case, and seeing that the Mukhtyar was not a person entitled to practise in these courts, and considering that the provisions of the section are likely to be defeated in thef uture as they have been in the past, I was of opinion that

perhaps we might make the intention of the clause more specific, which can be done either by adding an illustration, or by making the wording of the section clearer than it is at present. If it be the desire of this Council that the provisions of section 17 of the Code of Civil Procedure should be rigorously followed, we should say so in so many words, and prohibit this anomalous class of persons from appearing before the Mamlatdars. Under Section 17 of the Code of Civil Procedure only general attorneys can appear for parties who are not within the jurisdiction of any Court, and under this Bill all who are within the jurisdiction must appear before the Mamlatdar in person. At present the intention of the Bill is evidently not understood by all the Mamlatdars, because, as is shown by the case I have referred to and by other cases that have come before the superior Courts, these Mukhtyars are still allowed to practise in the Mamlatdar's Courts. I appeal to the members of the Council who have had a good deal of mofussil experience to say whether these men should be still permitted to practise in those Courts.

THE FERRIES BILL.

Mr. Gibbs moves that it be referred to the Select Committee.

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK:—When this Bill was before the Council on the last occasion, I said that I had some doubts as to the propriety of certain portions of it, and having since, with your Excellency's permission, seen a good deal of the correspondence on the subject which has led to the drafting of this Act, I must confess that my doubts have been considerably strengthened. I think, Sir, that this Bill will require a great deal of mature consideration, and seeing not only the diversity of the views of those officers who have reported upon it, but seeing also the actual working of the ferries for the last twenty years, I must confess that I look upon some of the provisions of this Bill with great misgivings. I think, Sir, that this Council will agree with me that we should be the last, as far as possible, to interfere with a trade which is only now growing into popular favour, viz., the coasting trade, of which we had very little a short time ago, and which is now rising into some importance. I trust that in the interests of the public we may see some way for protecting those interests, and for not allowing any monopoly whatever to damage those interests. If the Bill is referred to a Select Committee, I shall then move for certain information besides those returns to which I alluded on the last occasion, and which I think will be very necessary before we can model these provisions so that all legitimate protection will be given to the coasting trade, which is a rising branch of the public commerce.

THE CITIES SURVEY BILL No. 4 OF 1876.

4th December 1876.

Mr. Rogers moves the first reading.

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK said, he understood this matter was to have been dealt with in the new Revenue Code. As for the Bombay town survey having been successful, as the Honourable Mr. Rogers had told them it was, he did not think it had been particularly successful. The Honourable Mr. Scoble, late Advocate-General, when speaking on that subject on one occasion, expressed an opinion of the survey far from favourable. Mr. Scoble said he was quite ready to admit the survey was a very valuable addition to the means of knowledge they possessed of the boundaries in the town and island of Bombay, but in a most important case in the High Court (the Tower of Silence Case) it had been found absolutely unreliable. His (the Honourable Rao Saheb's) opinion was that if owners of property wished to have their title deeds investigated, it should be done, but to compel them to pay for a survey unless they chose to do so through their Municipalities was not a fair proceeding. If people wanted a survey, let them pay for it; but that was quite a different matter from compelling owners of property who might have rested secure in their titles for hundreds of years to have a survey and to pay for it. He did not see why persons should be required to pay for sanads to support titles of ancient standing.

The Honourable Mr. ROGERS:—I understand the Honourable Rao Saheb not to object to the first reading of the Bill.

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK:—No, I do not object to the first reading; I point out a matter for the consideration of the Select Committee.

THE COMPULSORY VACCINATION BILL No. OF 1876.

Mr. Gibbs moves the first reading.

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK:—I was one of those who were asked to give their opinions on this subject to the Bombay Association. I think most of the complaints that will arise among the native communities if the Bill were passed as it stands, could be avoided if vaccination were made compulsory only with vaccine matter taken from animals. There is no doubt a diseased animal would be just as apt to communicate disease as a diseased human being; but there are some human diseases, like syphilis, when transmitted from the parents, which are not observable except in certain cases, and in animals there are no such diseases, but only eruptions and sores which can be easily detected. If clean animals are selected there is not the slightest danger in vaccination. However, I think this is a point the Select Committee will be perfectly competent to deal with; and as the measure is simply for the City of Bombay, I should certainly feel inclined to give the Bill my support.

THE COMPULSORY VACCINATION BILL 5 OF 1876

16th February 1877.

The Honourable Rao Saheb V. N. MANDLIK said the suggestions he made when the Bill was first introduced had been followed by the Select Committee. He wished to explain, in reference to Section 28, that the last clause of that section would very seldom, if ever, come into operation. From the inquiries he had made as to the failure of animal lymph, he found it was of extremely rare occurrence and it was only in that case the Executive Government was empowered to make from arm to arm compulsory. He desired to make this explanation in this place, because the section might otherwise be misunderstood. He thought it was clear that this was entirely a provision for the protection of the public, rather than that any new experiment was sought to be introduced. The question of animal vaccination had now been *satisfactorily* solved as far as Bombay was concerned. He had great pleasure in supporting the second reading of the Bill as it was now submitted.

THE COTTON FRAUDS BILL 1 OF 1877.

22nd February, 1877.

Mr. Ravenscroft moves the second reading.

The Honourable VISHVANATH NARAYAN MANDLIK:—I was not present when the subject of this Bill was first introduced before the Council, and therefore had not an opportunity to make any remarks; but seeing that we are discussing to-day the principle of the Bill, I think the observations I am about to offer will be in order on the present occasion. I am sorry to say the honourable member in charge of the Bill has not given the Native members of this Council —speaking for myself—sufficient credit for following the movements, so far as we can here understand them, of political affairs in America and Europe. For my own part I wish to say we take as much interest as educated British subjects ought to take in all such matters, and I trust our interests in European and American affairs will ever continue to increase, and as education in India continues to advance, I believe the time is not distant when every properly educated Native gentleman may be expected to take part in political discussions with as much preparation and as much knowledge of the facts of each case as any gentleman in the West can have. There is no doubt we labour under considerable disadvantages, but I think we are doing our best; and for my own part, Sir, I think this Cotton Frauds legislation, ever since the Act came into force in 1863, has been proceeding on a principle which I take leave to say is a great mistake. I have taken notes of most of the cases that have occurred in the Mofussil, and have been brought into the Courts, ever since 1863, and I believe that the Bill is liable to all the objections that have been urged against it, both by the Chamber of Commerce and by the other Associations whose memorials and petitions are before us. There is no doubt that if cotton did rise again to 18*d.* or 20*d.* a pound, we might have an abnormal state of things in Bombay as in any other part of the world. We all know the unhappy times in Bombay when a special Act was passed for Bombay (Act XXVIII of 1865), but you do not count on abnormal times or look back to them as precedents for framing legislative measures. This country is now prospering under British rule. We should consider broadly the principles which ought to underlie all legislation affecting indus-

trial pursuits. In this country I believe the Indian Penal Code is quite sufficient to prevent adulteration of any article of commerce. If we are to have a special Act to prevent adulteration of cotton, I do not see where we are to stop. There are other rising industries, such as the jute trade, the tea trade, and others, with which the European members of this Council are quite familiar; and I really do not know where the system of inspection for checking frauds is to stop if it is once begun. There is no doubt the Secretary of State has the power of vetoing any Bill that we may pass, but a Commission has sat upon the working of this Act of 1863, and has pronounced upon it a verdict, which—the verdict of the majority of the Commission—agrees with the verdict of the country; and judging by the light of recent events, if a strong case on which the local community has pronounced its verdict were to go before Her Majesty's Government in England, I think we have every reason to hope the Secretary of State, much as he may have made up his mind in favour of a particular Bill, would rather listen to the united voice of the country than keep to any particular views which he may have pronounced on a certain state of facts placed before him. I think in a matter of this kind you must consider the views of those merchants who are principally interested. No doubt their views may appear to some overdrawn, but merchants do not create facts any more than other people do; and if we consider legislation by the light of what it professes to effect, I think there can be no doubt that the Cotton Frauds Act of 1863 has been mischievous. Perhaps that is a strong term, but the cases that have come before the High Court on the Appellate Side have shown that it is, at all events, a system which has not done the good it was anticipated it would do. In reference to a remark which fell from my honourable friend Mr. Graham, I think the onus is not upon those who oppose an Act of this kind to prove its uselessness, but upon those who seek to enact it.

The Honourable Mr. DONALD GRAHAM explained that that was what he said.

The Honourable VISHVANATH NARAYAN MANDLIK:—I thought the Honourable Mr. Graham said that he ought to have made out a case and regretted he had not positively made out one. I think he is not bound to make out a case, because the onus is upon those who

seek to fetter industry and commerce by such exceptional legislation. Unless any one who supports the Bill can prove that the peculiar circumstances of the Cotton Trade are such that without such legislation the industry cannot go on, the interests of the country itself demand that there should be no such legislation. I have had no time to study the Act to which reference was made with regard to the trade of flax in Ireland, but I hope to do so before the next meeting of the Council, and also to study what has been said *pro* and *con* in another place on the subject. I have looked at several of the clauses in the present Bill, and particularly one, of which I have not yet seen any notice taken. Section 18 says :—" It shall not be necessary in any proceeding for any offence under this Act to prove an intent to defraud any particular person." Now, ordinarily, in commercial transactions, a fraud can only be practised upon an individual. This Bill seems to me to introduce a new rule of evidence, which reminds me of a case from the Southern Maratha Country which was before the High Court within the last 6 months and of another case where the prosecution was suddenly stopped, but not before the prosecuted man had had to come from near Dharwar to defend the case and to spend a large sum to protect himself from a most unjust attack. In this case, some cotton which this broker was the means of selling was seized when it was already packed in bales, and when part of the bales had actually been delivered and the others were being delivered by the vendor to the vendee. This man was merely a broker who had nothing to do with the actual transaction, except that the cotton was found in some place — with which he was connected, and he was charged under the Cotton Frauds Act with adulteration. It was pointed out that he had nothing to do with either the buying or selling, and at last the prosecution was abandoned, but before that event I think the unfortunate man had to pay heavily. The prosecution was stopped, because the higher Court had already pronounced a strong opinion upon a similar case from the same part of the country. As regards the share of the present Legislature in the matter, I think if the old Act, which has been pronounced by the Commission of Inquiry to be useless, is to be repealed, the prospect of the Secretary of State vetoing the Bill need not deter this Council from passing it.

The Honourable Mr. RAVENSCROFT.—The Commission did not

suggest that the Act should be cancelled, but that it should be placed in abeyance until such time as an emergency arose again.

The Honourable VISHVANATH NARAYAN MANDLIK.—What I said was the Commission had given its verdict as to the uselessness of the Act—that is, as far as I have followed their proceedings, and if they have not recommended that it should be repealed, the verdict of the Commission that it is useless might well be followed up by sanctioning its repeal. The responsibility then will lie with the Secretary of State to veto the Act, repealing it, and keep on the Statute Book an Act which has been pronounced to be a failure. As we know, all laws should be made for the public good, and if this law is not for the public good, the Secretary of State must initiate some new legislation to enable him to retain an Act in force against the wishes of the community. The merchants may have expressed a very strong opinion, but those who feel strongly on a subject will speak warmly. Of course there may be different weights attached to different opinions, but where there are facts they can be dealt with by themselves, whether they are brought before us by the merchants, the Chamber of Commerce, the Mill-owners' Association, or any other Association, here or in the Mofussil. I have, therefore, very great pleasure in supporting the amendment of the Honourable Mr. Graham.

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK:—I wish to make a few remarks. First I desire to thank your Excellency for the observations you have addressed to me and to my honourable colleague, Mr. Rogay, and for the assurance that in the matter which is directly before the Council to-day our views will receive the very best consideration; but I think an explanation is due from me—I am speaking for myself—as to the reason why my minute of dissent from, or my adherence to, the final report of the majority of the Select Committee as it is published does not appear with the report itself. This report was prepared and sent to me about the 25th or 26th of April and the Court Session being about to be closed, and as I had charge of very heavy Government work as acting Government Pleader at that time in addition to my other duties and professional calls, and being also in a very bad state of health, I wrote to the Under-Secretary to say that it would be desirable, the Bill having been before us for a very long time and having been changed many times during its progress through the Select Committee, that I should have the whole revised Bill before me to consider it and to make up my mind either to agree to the Bill and the report of the Committee as a whole, or to signify my dissent from those portions of the Bill with which I disagreed. The Court having closed I left at once on sick leave for Mahableshwar, so that really and truly the only time I may say that the Bill has been before me, in its complete form, and as finally re-arranged, is since my return to this place on the 4th of June. I may say for myself that although this Bill has been before us for the last two years, I have paid, within that seemingly long time, as much close and undivided attention to this very important project of law as its merits demand; and, indeed, I can conceive no measure of greater importance than the codification of all the revenue laws of this Presidency that could come before us. But your Excellency will bear with me when I say that the very importance of this measure demands that before my decision could be laid before this Council or before the Select Committee, and published according to the statement in the 80th paragraph of the

report, which was read by your Excellency, I should not only go over very carefully the Code as it now appears, but should compare it with the two different previous editions of it (for this is the third) and with the whole of the laws we are now trying to amend and codify. And I will here remind the members that, when this Bill was first introduced, an objection was raised, and at the conclusion of the first day's proceedings your Excellency's predecessor intimated to the Select Committee that it would be better to divide the Bill, if it could possibly be divided, into two portions, as one portion of the Bill had, strictly speaking, nothing to do with the codification of the revenue laws, and as the newly-introduced improvements were likely to cause some discussion, it would be well for the Committee to consider whether the Council ought not to make the measure strictly one of codification, leaving all foreign matter to be dealt with in a separate Bill. By way of illustration as to the new matters introduced I will only mention one subject which was introduced into the Bill at the last but third meeting of the Select Committee, viz., an importation, as I was told, from the Land Revenue Code of British Burmah. That is embodied in Section 126 A which runs thus—" Every occupant's right is subject to the reservation in favour of Government of all mines and mineral products and of all buried treasure, with full liberty to work and search for the same, paying to the occupant only compensation for surface damage as estimated by the Collector." That word " occupant" there is merely a technical expression, which, since the Regulation XVII. of 1827, has been known simply to mean the person whose name authorizedly appears in the public papers as the man responsible for the payment of the revenues to Government. Having gone through—I cannot say two-thirds, but at least more than one-half of the Code as now drafted—I find that the idea which this single section alone conveys is one which will cut at the root of private property in land. This new law is a law which is to regulate, and which will regulate, the relations of the different classes of land-holders and owners of lands in this Presidency to the State. I think the idea that the above section and other sections like that naturally convey is, that the landholders in Presidency have no rights except what may be called that of being occupancy tenants, of mere occupants. Now I beg leave to say that that is a wrong notion.

His Excellency the PRESIDENT :—That has been explained by the Honourable Mr. Rogers to-day to be a wrong notion.

The Honourable VISHVANATH NARAYAN MANDLIK :—I thank your Excellency for the remark. The idea which I have derived from the speech of the honourable member in charge of the Bill is this—that Government lets its lands in this Presidency, and has been letting them since 1827 under a certain system, and that this present Bill now settles the law by which the lands are to be let and by which the revenue is to be derived. I may be wrong, but that is my impression, and the impression is now made somewhat more strong from the manner in which the terms "occupant" and "alienable" and "non-alienable" have been settled almost at the last stage of the Select Committee's proceedings. It is on that ground, and after the most anxious consideration of the matter, that I am about to ask only for a little more time to put down my remarks in a succinct form. I have not the slightest wish to delay the proceedings more than may be absolutely necessary, but this much I must say, and I will again allude to the new section which I have already referred to as an illustration. On going over the Burmah Land Revenue Act of 1876, I find that the only rights which occupants or holders of land in Burmah can have are laid down in section 6, clauses (*a*) to (*d*), which runs as follows :—

"No right of any description shall be deemed to have been or shall be acquired by any person over any land to which this part applies, except the following :—

(*a*) Rights created by any grant or lease made by or on behalf of the British Government ;

(*b*) rights acquired under sections twenty-seven and twenty-eight of the Indian Limitation Act, 1871;

(*c*) rights created or originating in any of the modes hereinafter in that behalf specified;

(*d*) rights legally derived from any right mentioned in clauses (*a*), and (*b*), (*c*) of this section."

It will be seen at once, without going into the history of Burmah regulations for the possession and enjoyment of land, that a law derived from that Code, under which the holders have a limited

description of rights, cannot be a law which should be introduced at once and be made universally applicable to the Bombay Presidency. Here, land has been declared repeatedly, and recently in the Kanara Land case by the High Court and by their Lordships in the Privy Council, to be entirely private property under various denominations, and Regulation 17 of 1827 distinctly says that there are certain tenures under which, if land has been held by a man for more than 60 years, Government have not even the right of levying a revenue on that land; so that whenever land in this Presidency is *Watan*, or *Miras* or *Muli*, or *Suti* or *Dhara*, which are descriptions of *Miras* or *Dhara*, it is as much private property as any property in any part of the world can be, and all that Government has to do is to regulate the assessment of that land, which is the duty of the Executive Government under Regulation 17; and with which the Courts of law will not interfere. The Honourable Mr. Rogers said that under Act I of 1865 the people had obtained a very valuable species of property. That, I beg leave to say, is not a correct statement of the law. It is not correct, because numerous prior decisions have established what is well understood to be the common law of the country, that the ryot shall not be disturbed in the occupation of his hereditary holding, which comes to him by right of inheritance, so long as he pays the Government revenue. That may not be so in the case of waste lands, or lands of which Government may be the immediate proprietor, and which may be let by contract or any other arrangement they please, but in the case of man's ancestral property, derived by inheritance, it is so.

The Honourable Mr. RAVENSCROFT:—Are you referring to alienated lands or to Government land?

The Honourable Rao Saheb VISHVANATH NARAYAN MANDLIK:—I am referring to all lands. And that word alienated reminds me of the great amount of confusion in these revenue matters. "Alienation" means, ordinarily, alienation of the public revenue: that is laid down by Elphinstone and Chaplin, and all the authorities, and is acknowledged by the courts. When any question of law has come up in reference to the Alienation Department, as it is called, it has been a question whether the revenue is alienated; and, as in a celebrated Tanna case reported in Vol. VI. of the High Court Reports, the

courts have decided that the alienation is merely an alienation of the Government revenue, even if words like *kul bab kul kanun* are used, and it does not touch the soil. When alienations are spoken of they are ordinarily simple alienations of the revenue, and the distinction between Government land and private land is a distinction well known even under the Bombay Survey Act of 1865; but this distinction is sought to be swept away, and there is no definition in the Bill of 'owner of land' as distinguished from 'occupant of Government land,' though that is a distinction clearly known up to the present time, and which ought to be preserved. There are other points of declaratory law, which are entirely new law, from which I and my honourable friend Mr. Rogay have signified our dissent during the progress of the Bill. For example—there is one section which is particularly known as the tenant-right section, section 34, clause 2 which now, for the first time, changes the onus of proof in the case of disputes between landlords and tenants. The custom of the country has been declared to be the reverse of what is here laid down, by a series of decisions extending over the last 50 years. The burden now will be placed on the landlord to prove that his tenant is an annual tenant, or that he has not a perpetual right of occupancy. That is one of the new sections; and there are several other sections to which I and my honourable friend Mr. Rogay have the same objection in principle. As was noticed by your Excellency's predecessor, there is a certain amount of new law which it is sought to introduce into this Code, and as to that we differ in principle from the majority. These are a few of the points I wish to urge; the rest will have to be carefully drawn up. I trust I have only discharged my duty in drawing your Excellency's attention and the attention of the Council to the circumstance that we were not allowed sufficient time to note down our objections and have them published. The report contemplated that they should be published, and I must say I was surprised at its publication without the least notice.

* * *

With regard to Section 15, the Honourable Mr. MANDLIK said he had an amendment to propose to the proviso attached to it. He objected to the term "alienated villages" as it stood. There were certain classes of landowners who had special proprietary rights, and

those rights were not observed by this section. He would propose that the term to be used should be "alienated" or proprietary villages.

The Honourable Mr. ROGERS:—Do you mean by that to bring in the Khotes ?

The Honourable Mr. MANDLIK:—I propose to bring in any one who can prove his right to the holding of a village. When we come to the Khoti Act, it will be time enough for me to explain a number of misapprehensions that exist on that subject.

The Honourable Mr. ROGERS said there were villages that were neither alienated nor proprietary, but were merely leasehold.

At the suggestion of His Excellency the PRESIDENT, the decision of the point, wherever it might occur throughout the Bill, was reserved.

* * *

With regard to Section 29, the Honourable VISHVANATH NARAYAN MANDLIK said difficulty was experienced in the practical working of this section in the existing Act. There were several cases now pending, especially from the Poona Collectorate, in which old attachments of *watans* were being contested by the Revenue Department, and it was not clear how this section applied. He had been about to make a reference as Government Pleader before he gave over charge. It would be useful to inquire how far the section was intended to affect *watans* which had been attached on old decrees, and where there was a sort of perpetual running attachment.

The Honourable the ADVOCATE GENERAL said that assuming the creditor to have attached a *watan* years ago, there were of course existing rights in the creditor's hands; and the question was—Whether the Council would think it right and proper that such existing rights should be interfered with,—Whether words should be introduced making the section restrospective, or whether it would be desirable to provide that it should not interfere with existing rights. The Council might add " provided nothing in this section shall interfere with any attachment existing."

The Honourable VISHVANATH NARAYAN MANDLIK:—I think it is better that that should be done. I know considerable difficulty has arisen.

The Honourable Mr. RAVENSCROFT :—I do not think any addition is necessary. The High Courts have had cases before them,

and have distinctly laid down that a law of this kind has no retrospective quality.

The Honourable Mr. GIBBS thought it was clear that the section referred to attachments after the passing of the Act.

The Honourable Mr. ROGERS :—The attachments require to be renewed every year, do they not ?

The Honourable VISHVANATH NARAYAN MANDLIK :—No, they do not require renewal every year.

The Honourable Mr. GIBBS :—The ordinary course in the mofussil is to attach a *watan* and to apply for the proceeds every year.

The Honourable Mr. GIBBS said the words of the section were " after the date of this Act coming into force." It should be after the date of Act III. of 1874 coming into force, which was the 5th February 1875.

The section was amended by substituting the words " after the 5th February 1875 " in the 11th line of the 1st paragraph, for the words " after the date of this Act coming into force."

His Excellency the PRESIDENT said the section was clearly not retrospective.

The Honourable VISHVANATH NARAYAN MANDLIK :—But that has been contended.

His Excellency the PRESIDENT said :—If persons lent money on the security of the attachment of *watans* after this section had become law, it was clearly at their own risk ; but it would really be very hard upon creditors who had lent money formerly on such security at the time when it was allowed by the courts, if they were deprived of the attachments by the present law.

The Honourable Mr. GIBBS thought it might fairly be left to the High Court. The matter was well argued out when the Watandars' Act was passed.

The Honourable VISHVANATH NARAYAN MANDLIK said he had brought the difficulty to the notice of the Council because he had met with it in the course of his duties as acting Government Pleader.

His Excellency the PRESIDENT thought the section might be allowed to stand as framed, because there was not the shadow of a reason for saying it was retrospective.

The Honourable the ADVOCATE GENERAL said his idea was, that if the question was taken before the High Court, previously existing attachments would be removed.

The Honourable Mr. GIBBS said :—The High Court had ruled that no property was attachable until the money was due.

The question was then allowed to drop.

* * *

The Honourable VISHVANATH NARAYAN MANDLIK said there was a difficulty in regard to Section 48. The High Court had determined that there were nine shareholders in a certain *watan* in the Poona district, leaving to the shareholders the right to select one of their number in rotation. The Collector of the district refused to recognize one of the nine branches, and said the High Court must define exactly the period to be served by each sharer.

The Honourable Mr. GIBBS said the section did not seem to him to require any alteration. According to it, the onus of arranging the order of rotation was clearly placed on the Collector.

The Honourable Mr. ROGERS said there had been some difficulty experienced in the working of Section 66 under the old Act, in regard to the appointment of deputies by Native Chiefs who were partners in *watans*.

It was agreed that the Honourable Mover should draft an amendment, and submit it to the Council at the future meeting.

* * *

12th June 1877.

The Honourable VISHVANATH NARAYAN MANDLIK said he wished to remark that some of the sections in this chapter were discussed for the first time in the Select Committee, and now came up as rearranged also for the first time, so that the work before the Council differed rather in character from what they had performed on the previous day. He mentioned this because he considered that in

considering the sections now before the Council a good deal would have to be omitted or added, and much discussion might arise.

His Excellency the PRESIDENT said that though some sections might be new to the Council, they must have been often talked over in the Select Committee.

The Honourable VISHVANATH NARAYAN MANDLIK said a good deal of the chapter had been re-arranged since it was before the Committee, and there were some matters which he found came up only in the re-arrangement.

In regard to Section 201 the Honorable VISHVANATH NARAYAN MANDLIK said that—In the old law the terms used were "owner, occupant, or agent," whereas in the present section they were "holder, or person in occupation." He mentioned also that there was an important proviso in the old Act, which had now been left out, to the effect that "the determination of any boundary under this section shall not debar any one claiming a right in the land from any legal remedy he would otherwise have for dispossession." That was a very material provision, and he might mention that it was inserted in the Survey Act after very full discussion.

His Excellency the PRESIDENT:—Will the Honourable Mover kindly say why the proviso was omitted?

The Honourable the ADVOCATE GENERAL said he believed it was in consequence of a decision of the High Court, the result of which was that, notwithstanding boundaries had been fixed in 1865, it was held that that was not binding on the villagers, but that they were at liberty, in due course, to dispute the correctness of the boundary settlement. It was now intended to make the settlement of the boundaries final, and that the parties shall not be allowed, after they are settled by the proper officer, to dispute their finality in a civil court; and he thought the Council would be of opinion that it was very desirable there should be finality.

The Honourable VISHVANATH NARAYAN MANDLIK said there were two descriptions of boundaries. There were the village boundaries, which were formerly determined under Regulation X. of 1827. When the Survey act of 1865 was first framed and passed, this Regulation X. of 1827 was repealed because it was then stated

and the Council held that Regulation X. of 1827 prescribed a very cumbrous mode of procedure for the settlement of village boundaries, and that they might be much more speedily and satisfactorily settled by surveys. The decision of the High Court was in reference to disputes which might arise after the survey of a district was completed, not whilst the survey was going on, and it had no reference to boundaries as involving rights, but simply as boundaries.

His Excellency the PRESIDENT :—Can a boundary be a boundary if it does not involve rights ? What is a boundary if it does not involve rights—who cares about it ?

The Honourable VISHVANATH NARAYAN MANDLIK said :—By the Survey Act the Council had declared that all disputes as to village boundaries when decided by the survey should be final. He would presently read to the Council why that was done, and also why, in regard to field boundaries, the rights of individuals were saved, resort to the ordinary courts of law being allowed. In regard to fields there was a separate regulation.

The Honourable Mr. GIBBS :—Section 201, which the Council have now before them, refers to field boundaries, and not to village boundaries.

The Honourable VISHVANATH NARAYAN MANDLIK said :—Yes, and in regard to fields, he did not think it was intended to stop people from going to law at all. When the Survey Act was discussed by the Council, Sir William Mansfield suggested that a clause should be added to this particular section showing clearly that a ryot had redress by an action in regard to any boundary determined by the survey. It was agreed that a ryot could appeal to the court by the then existing law, but Sir William Mansfield considered that every ryot might not understand that to be the case, and he suggested that it should be specifically declared in the Act that the Superintendent of Survey's fixing of a boundary was not a finality. Then, again, the Honourable Mr. Ellis said distinctly that survey marks had nothing to do with private property. It was on Sir William Mansfield's proposition that the proviso he (Mr. Mandlik) now proposed to add to this section was included in the old Act. And when the Council came to consider Section 204 A., which was a new section

added by the Select Committee, and was not in the original draft, he would move that clause B, should be struck out. This clause, as at present drafted, would provide that the settlement of a boundary should be determinative "of the rights of the landowners on either side of the boundary fixed in respect of the land adjudged to appertain or not to appertain to their respective holdings;" and except as regarded village boundaries, it was distinctly understood at the time of the survey that civil rights were to be preserved.

His Excellency the PRESIDENT:—Was it understood that the village boundaries determined private rights?

The Honourable VISHVANATH NARAYAN MANDLIK said they were determined, because there had been a special tribunal for them before under the Elphinstone Code. That system was very cumbrous and did not work satisfactorily, and the Government determined when the Survey Act was passed that when a district was first surveyed the village boundaries should be finally settled. There was a clause in the Survey Act providing that the determination of village boundaries should be final. He would presently point out to the Council one or two decisions where villages had lost their seigniory rights in regard to boundaries being made over to other villages; but the cultivators still retained their fields, merely paying the revenues through one zemindar instead of another. The Honourable Mr. Mandlik concluded by reading the following extract from the Official Council Reports:—

"The Honourable Mr. INVERARITY explained that the boundaries put up by the survey officers in no way affected title to the land. In explaining them, the survey officers made no inquiries regarding title. The survey marks were simply put up for survey purposes, and there was no reason whatever why the civil courts should have anything to say in regard to the placing of these marks.

"The Honourable Mr. ELLIS thought it would be most inconvenient to allow an appeal to the civil court from the decision of the Superintendent of Survey. The civil courts had ample power to decree possession of land to its owner. The survey marks, however, had nothing to do with private property.

The boundaries of a survey number might, or might not, be the boundaries of a private estate. They might comprise one or many estates, but had no necessary connection with the boundaries of such private property. They were simply placed for the purpose of mapping out the country; each area included between certain boundary marks being an assessable item of village, land paying revenue to the State.

His Excellency the PRESIDENT thought it should be clearly stated in the Bill that boundary marks did not affect private rights.

The Honourable Mr. FRERE concurred with Mr. Ellis. He thought that in practice no difficulty would be felt. He was Judge at Dharwar when the survey was first introduced into that district. Cases constantly arose in which the boundaries settled by the survey officers intersected private estates. But occupants of land soon understood that their rights were in no way affected by the operations of the survey.

His Excellency Sir WILLIAM MANSFIELD said :—The real object of placing boundary marks should be distinctly recognized in the bill. He would propose the addition of the following proviso to Section XIV :—"Provided that the determination of any boundary under this secrion shall not debar any one claiming any right in the land from any legal remedy he would otherwise have for dispossession."

The section as thus amended was agreed to."

The Honourable Mr. GIBBS asked whether the Honourable Rao Saheb wished to add anything to Section 201, or whether it would be sufficient to strike out clause *b* of 204 A.

The Honourable VISHVANATH NARAYAN MANDLIK said he wished to move that the proviso he had read should be added to the 201st section.

His Excellency the PRESIDENT :—Then will you make a substantive motion to that effect ?

The Honourable VISHVANATH NARAYAN MANDLIK :—If your Excellency pleases.

The Honourable the ADVOCATE GENERAL :—It seems perfectly fair.

The Honourable Mr. ROGERS :—As far as field boundaries are concerned, I have no objection to offer.

The Honourable Mr. GIBBS :—There is not the slightest doubt it ought to be added. They ought to be allowed to fight as much as they like in the civil courts.

The Honourable ALI ROGAY said :—The point seemed to have been fully discussed by Council before, and settled.

The Honourable Mr. GIBBS said that without the proviso the courts would probably interfere, and say they could not suppose it was intended to debar the people from going to law, but it would make the matter clearer if the provisos were added.

His Excellency the PRESIDENT:—But why has it not been put into the Bill before ?

The Honourable Mr. ROGERS:—Our attention was not drawn to it.

The Honourable Mr. Gibbs:—It was left out of the original draft.

His Excellency the PRESIDENT:—But there must have been a reason. It would be a great thing for the people and the peace of the country if the determination of field boundaries could be made final. Whether it may be advisable on other grounds to make an important change of this kind, I do not know; but as regards the welfare of the people, with deference to my honourable friend, Mr. Mandlik, I think what he opposes would be far better for them than that they should be left to dispute. It may be said the survey inquiries were not sufficiently good, but if so, why not make them good ? If it is said there must be some final settlements of disputes, then make provision that if, at the survey, a dispute becomes so strong that the survey people cannot settle it, it must be referred at once to a civil court. The object of a settlement is to set aside disputes and brawling, so that peace may be secured. Anything worse for the people in the villages than the sort of process my honourable friend (Mr. Mandlik) describes,

cannot be imagined. You have now an elaborate process which settles boundaries—which my honourable friend says are mere boundaries and do not involve anything ; and there is no settlement at all. You incur trouble and expenses and harass the people for a settlement, which, after all, is no good, but only fixes mere boundaries without interfering with private rights.

The Honourable Mr. GIBBS :—There is no such thing as a record of rights in our survey.

His Excellency the PRESIDENT :—That may be as you please to call it, but in my humble opinion the Bombay Survey gives a record of rights in the highest possible sense. I think you don't do justice to it ; it is as fair a record of rights as any survey in India. I should say it is at least as good as, if not a great deal better than, any record of rights in some parts of India. It may be that disputes may arise about boundaries which may be a little beyond the judicial abilities of the survey men to decide, but the best course to meet such cases is to put in some provisional clause which shall compel the parties to bring them into court, and then they can be decided. But nothing is so bad for the people of India as having settlements which are not permanent—which just, as it were, touch the surface of dispute and do not settle it. The Government and the people have the trouble of the survey, and when it is completed they may go and fight the matter all over again.

The Honourable VISHVANATH NARAYAN MANDLIK :—With deference to what your Excellency has stated, what I say is this, that if the surveys were to be began in this Presidency under the law which we may now enact, perhaps the survey officers as a body would be competent to perform the duties which would be expected of them under such a law. But the Honourable Mr. Ellis lays down most broadly that the survey marks were not intended to have anything to do with private property, and that is simply stating what I know to be the fact, and what the High Court itself stated to be the fact when it held in one of its decisions that survey marks did not determine private rights but afforded only valuable evidence to assist a decision. Sir Bartle Frere, when the Survey Act was discussed in the Council, stated that surveys had been going on for 30 years without any law to regulate them, and those surveys were legalized, so that

they would hold good between the occupant and Government; but I submit that they could not be held to determine the rights of private persons. To pass a law now in 1877, by which old survey marks were made to define private rights, would be a piece of retrospective legislation which would be very objectionable.

His Excellency the PRESIDENT said he could not understand why the proviso had been omitted from the Bill. It must have been done intentionally because when clause *b* of Section 204 A was inserted, this must have been in contemplation.

The Honourable Mr. ROGERS said:—The Select Committee did not consider very minutely the case of field boundaries, because, as a matter of fact, in the survey operations no disputes regarding field boundaries has ever been raised.

The Honourable Mr. ROGAY thought there was no doubt the majority of the Select Committee would agree to the insertion of the proviso, as proposed by the Honourable Rao Saheb.

His Excellency the PRESIDENT:—The determination of rights would refer to cases of settlements made after the passing of the present Bill. The Honourable Mr. Mandlik has objected to my proposition or my argument, because the honourable member says it would affect settlements which were made upon the understanding that the decisions would be provisional and not final, and that the Council will not be prepared to give it such retrospective effect. My answer is that it would only affect field boundaries that may be settled after this Act is passed. Of course, the boundaries would then be settled with the knowledge that they were final, and any disputes that arose would be more carefully investigated. That system would be much better than the existing one. As to there having been no dispute about field boundaries, there must have been something of the kind or else how came there to be a decision of the High Court on the point?

The Honourable VISHVANATH NARAYAN MANDLIK said:—The surveys of this Presidency were nearly all settled and completed except in Sind and the Panch Mahals.

His Excellency the PRESIDENT:—Then, what is Colonel Anderson doing at present?

The Honourable MR. GIBBS:—He is beginning again after the first 30 years in one or two talukas, or he is in Mysore.

The Honourable MR ROGERS said there was a fresh survey every year.

The Honourable VISHVANATH NARAYAN MANDLIK:—There is no fresh survey; there is only a revision of assesments.

The Honourable MR. ROGERS:—But there may be a revision of boundaries as well.

His Excellency the PRESIDENT:—They must all be re-examined.

The Honourable MR. ROGERS :—There need not necessarily be a revision, but where any mistakes have occurred they can be remedied. There is a revision of field boundaries certainly. Under the old survey there were large fields which have been cut up into smaller ones.

The Honourable MR. GIBBS:—That does not affect the rights of private parties. I am afraid if we made the surveys final we should be introducing a new thing which was not intended by the authors of the Survey Act.

His Excellency the PRESIDENT:—Well, it is a very important matter. The more I think of it, the more important does it appear to me. Although the survey may have been once completed, it is only for a limited period. It takes 20 to 30 years to survey a Presidency, and by the time the portion is completed the survey of the district commenced with will be just expiring, and will come under the new Act. and the revision can be commenced and will always go on. It is just like a tide. There will be fresh disputes constantly arising as land becomes more and more valuable ; and that the settlements of boundaries should be made final, is a matter of great importance for the welfare of the country.

The Honourable VISHVANATH NARAYAN MANDLIK said: this was a section to which objections were raised in the Select Committee and he understood at the time that the honourable member in charge of the Bill would not object to saving private rights in regard to fields.

The Honourable MR. ROGERS:—I do not object, though I quite agree with His Excellency the President's observation that it would be advisable to have some finality.

The Honourable Mr. RAVENSCROFT said that in point of fact, in 999 cases out of 1,000, there was finality already.

The Honourable Mr. ROGERS :—Yes, in 999 cases out of 1,000 there never has been any dispute. There may be one or two isolated cases in which disputes have arisen. The inquiries are made so carefully before the boundaries are fixed, the patels, the village accountants, and everybody being present, that in 999 cases of 1,000 the decison is certain to be right.

His Excellency the PRESIDENT said :—There was still the one case in a thousand remaining, and where the settlements were so numerous, the number of disputes must be large.

The Honourable Mr. ROGAY said that according to Mr. Rogers the people were satisfied with the decisions of the survey officers, and if they were satisfied, so much the better ; but at the same time, it might be as well to give them the option of appealing to the civil courts.

The Honourable Mr. GIBBS said that Chapter IX. of the Code was merely meant to be the present Survey Act inserted.

His Excellency the PRESIDENT said :—Whenever, during a debate, honourable members hit upon an important point which met their views, they brought it forward notwithstanding that it might have been omitted from a previous Act, and it was quite permissible for the executive Government to do the same. One very important point was to try and give finality to the survey. If it was said that the survey required a certain judicial element, then let that change be made. To secure finality in this matter would be a great thing for the people.

The Honourable Mr. GIBBS :—But if we have now got to the end of the surveys and one or two of the very early ones are being revised, any people who were dissatisfied must have ceased to be so or they would have already come into court. So we are really arguing rather about a shadow.

His Excellency the PRESIDENT :—Pardon me. I am afraid I did not make myself perfectly clear to the Council. I thought I had made it quite clearly understood that the survey would always be

going on. It is like "The king is dead; long live the king;" no sooner is one survey finished than another commences.

The Honourable Mr. GIBBS:—I understand it is merely a revision of the old survey, and that the boundaries already fixed will not be interfered with unless due cause for interference is shown, and the boundaries of fields have not been settled.

His Excellency the PRESIDENT:—I understand Mr. Rogers to say that when the surveys are revised the boundaries are altered if necessary.

The Honourable Mr. ROGERS:—Yes, where it is found necessary they are altered.

The Honourable Mr. GIBBS:—Then the suggestion is to make a new law to say that the decisions of survey officers in disputes between private individuals as to the boundaries between their holdings shall be final. It has not been so hitherto.

His Excellency the PRESIDENT:—What I submit is that if honourable members opposite are entitled now to urge any improvement they may see fit, we are entitled to do that also.

The Honourable Mr. GIBBS:—It will be a new law. If we consider it as a new law to be now introduced, it comes before us in another manner; but if we consider that we are merely codifying the law, and part of the existing Act has slipped out from the code—

His Excellency the PRESIDENT:—But we are not merely codifying.

The Honourable Mr. GIBBS:—No, there is new law introduced as in the case of the Burmah section and the *onus probandi* section; a good deal at the end is all new law.

His Excellency the PRESIDENT:—Well, it is a pity to lose the opportunity of considering this matter. I would not ask the Council to come to a decision at this sitting, but at a future sitting it should be considered whether we should not take opportunity to make these surveys final. The law would not be retrospective.

The Honourable the ADVOCATE GENERAL:—No, it would not be retrospective.

His Excellency the PRESIDENT:—That is a perfect answer to the Honourable Mr. Mandlik's objection. I think it would be unfair to give retrospectively a finality to survey proceedings which were not taken on the understanding that they were final, because so long as people believed their own private rights were not affected, they would not take the extreme trouble to see the boundaries settled properly that they would take if they clearly understood it was so and that the decisions were final. That is the reason why the legislatures in all parts of India decline to give retrospective finality; but this argument falls to the ground if the finality is made prospective only. If the Council decide that the surveys shall in future be made final, the Advocate General might advise us to include clauses which would empower the survey officers to refer matters in dispute to a civil court. That has been often done on the other side of India. There may be cases in which the survey officers will find the settlement of boundaries involves some very awkward question. Or it might be said that if either party object to the boundary mark fixed by the survey officer they must bring a civil suit within a stated time, and if they failed to do so then the decision would become final. In the case of a matter being referred to a civil court, the decision of that court would be final.

The Honourable MR. GIBBS:—I am quite prepared to consent to it as a new law.

His Excellency the PRESIDENT:—It is very desirable to have these matters brought to a final settlement at the time the survey is made. When questions of boundaries are now taken to a civil court, the court does not know what to do; the only way is for the judge to go to the spot and see for himself, and it is obvious what an advantage it would be to have the survey officers present at the inquiry, when every argument on both sides could be fairly inquired into. It is a golden opportunity to do a great good.

The Honourable VISHVANATH NARAYAN MANDLIK:—The law throughout has been, and has been worked, up to the present time so that what the survey has determined has been only for the preparation of its own records, and the land proprietors, as amongst themselves, have always had the ordinary civil tribunals into which to carry their disputes as to proprietary titles; and in this Presidency

where our revenue courts have been almost finally done away with by Act II. of 1866, there is hardly any sort of machinery for deciding points of right as between the parties, except by resort to the civil courts. Even in possessory suits, the ordinary civil courts have concurrent jurisdiction with the Mamlatdars, who are the only officers in the Revenue Department now who have cognizance of possessory suits.

His Excellency the PRESIDENT :—This would only carry finality so far as the rights of holders are affected by the boundaries. There may be many disputes about titles to land in which there is no boundary question at all. The honourable member speaks as if making the decision of boundary disputes final would affect the jurisdiction of the civil courts, to decide all cases regarding the title of land. I explain that it would not have that effect.

The Honourable VISHVANATH NARAYAN MANDLIK :—The proviso which I wish to have inserted states that "the determination of any boundary under this section shall not debar any one claiming any right in the land from any legal remedy he would otherwise have for dispossession." That is all the question, and refers to the title of land; the question before the High Court was precisely this. The term "boundary dispute," as used in the Survey Act, means a contention between two neighbouring land proprietors. After the functions of the survey officers have ceased in a district, the Collector is the proper person to determine disputes as to boundaries; but where a landowner seeks to recover from the owner of neighbouring land, ground usurped or encroached upon by him, he must file a suit in a civil court. The determination of the Collector as to the proper position of the boundary-marks withdraws no rights of possession, although it affords valuable evidence as to the rights of the parties.

The Honourable the ADVOCATE GENERAL :—Would there be any difficulty in inserting a clause to the effect that the survey should be considered final unless disputed within five years after the passing of this Act, so as to give parties not satisfied with the present surveys an opportunity of raising the question within a limited period?

The Honourable VISHVANATH NARAYAN MANDLIK :—I do not speak of them as boundaries. No one can disturb the boundaries:

but they do not interfere with the rights of private property.

The Honourable the ADVOCATE GENERAL:—But a man may say "my neighbour has a piece of my land in his field," and the question is whether there are still many of such disputed cases, or whether there will be no harm in saying the boundaries shall be final.

The Honourable VISHVANATH NARAYAN MANDLIK:—I know, as a matter of fact, that there are numerous disputes.

His Excellency the PRESIDENT:—The honourable member declares that there are many disputes.

The Honourable Mr. RAVENSCROFT:—There are cases, but in my experience they are very rare.

The Honourable Mr. ROGERS:—In my experience also.

The Honourable Mr. GIBBS:—Yes, the honourable member's experience is confined to Guzerat; but I think as the Honourable Rao Saheb comes from Ratnagiri, the hot-bed of disputes of this nature, he will know more about them than anyone else.

The Honourable VISHVANATH NARAYAN MANDLIK:—It is always the case that there are many disputes in a country which is overcrowded, and where there is less land than the people require,

His Excellency the PRESIDENT:—Of course the finality of the decision as to boundary marks would not affect the jurisdiction of the courts in cases where there is no boundary dispute at all,—where the question is whether a certain man is the right person to succeed, or anything of that kind. Private rights, in so far as the boundaries are concerned, only would be finally decided by the survey. My honourable friend appears to mix up the two things, which really are quite distinct. It is a very important matter, and suppose we reserve the point and let this section stand over.

This course was agreed to, and the consideration of the section was postponed.

The consideration of Section 204A, which has reference to the same point, was deferred also.

The Honourable VISHVANATH NARAYAN MANDLIK said that there was a limit to which some of the district officers had objected,

and he had some remarks to offer on that point and connected with the Section 204 A., which had been postponed.

His Excellency the PRESIDENT:— But it may be a good thing to have all the honourable members' observations and arguments stated together.

The Honourable VISHVANATH NARAYAN MANDLIK said he referred to opinions expressed by districts officers in obedience to an order of Government, and which were noted on the second draft of the Bill.

His Excellency the PRESIDENT:—Were they communicated to the Council ?

The Honourable VISHVANATH NARAYAN MANDLIK:—They were communicated to the Council and laid before us.

His Excellency the PRESIDENT :—Will the honourable member quote them ?

The Honourable VISHVANATH NARAYAN MANDLIK :—If we are going to postpone the consideration, may I not do it at a future time?

His Excellency the PRESIDENT:—Had you not better do it now ? Then we shall have all your remarks reported and shall be able to consider them. As I understand, we have only heard part of your argument. Why not have the whole of it at once ? It will then be before the Council, and at the further consideration of the sections we shall be able to refer to it.

The Honourable VISHVANATH NARAYAN MANDLIK:—I do not refer so much to a point on which I differ from the Select Committee, but rather to some remarks of the district officer on the record, to the effect that the finality of the proceedings should not be completed until a certain period has expired. Some officers are of opinion that the time should be undefined, and others consider that it should be two years or less

His Excellency the PRESIDENT:—But it will be far better that the whole case should be before the Council. If we can have the benefit of the whole argument at once, it will be advantageous. Who said two years ?

The Honourable VISHVANATH NARAYAN MANDLIK:—Colonel Francis said two years, and Colonel Taverner said it should be extended or left undefined. What I would say is that it should be two years, but that in special cases it should be left open to the Government to direct that a dispute of this kind may, by special order, be opened after the two years have expired.

His Excellency the PRESIDENT:—Have you sufficiently read Colonel Francis' or Colonel Taverner's opinion ?

The Honourable VISHVANATH NARAYAN MANDLIK:—They are only summarized here; I think the original letters must be in the Legislative Department.

The Honourable Mr. GIBBS:—Your Excellency is perhaps not aware that there were two or three drafts of the code put together by certain officers, and one was printed, and in the margin the opinions of the different officers were summarized. I think the majority of the Select Committee agreed with Colonel Taverner that the time should be left undefined.

His Excellency the PRESIDENT:—Do I understand that we have the whole of the Honourable Mr. Mandlik's opinion before us ?

The Honourable Vishvanath Narayan Mandlik:—Yes, upon this question.

His Excellency the President:—Then I understand you would like to render these cases disputable up to a period of two years ?

The Honourable Vishvanath Narayan Mandlik:—In regard to village boundaries ?

His Excellency the President:—And in regard to field boundaries ?

The Honourable Vishvanath Narayan Mandlik:—In regard to field boundaries I should wish to have no finality at all. In other cases I think there should be no finality up to two years, and that thereafter, on due cause being shown, power may be left in the hands of the executive Government to re-open them if they see fit.

His Excellency the President :—Do these opinions of Colonel Francis and Colonel Taverner refer to village boundaries ?

The Honourable Mr. Gibbs :—To any boundaries.

The Honourable Vishvanath Narayan Mandlik :—I should like to have the letters themselves.

The Honourable Mr. Rogers said :—The time was left undefined by the Select Committee on purpose. In Section 280, regarding appeals, it is left to the Governor and to "revenue officers not inferior in rank to a Collector or Superintendent of Survey."

There was no further discussion upon this point.

With regard to Section 205. the Honourable VISHVANATH NARAYAN MANDLIK said he objected to the omission of the word "owner." In the existing law the words were "owner or occupant," and here the term used was "landholders."

The Honourable Mr. ROGERS :—But does that interfere with any person's right at all?

The Honourable VISHVANATH NARAYAN MANDLIK :—Questions have been raised, and the High Court has declared the existence of proprietary rights in land as opposed to another class of lands, namely, Government lands, and, therefore, it is of the greatest importance that where the word "owner" occurs in the existing law, it should be retained.

The Honourable Mr. ROGERS :—"Holder" would include "owner."

The Honourable VISHVANATH NARAYAN MANDLIK :—It would, or it would not; but we have the word "owner" at present, and why not retain it?

His Excellency the PRESIDENT :—I think the section is all right. You see the word "holder" is defined by clause (20) of the Interpretation Section. That clause says :—

> "'Holder' or 'landholder' signifies the person in whom a right to hold land is vested, whether solely on his own account, or wholly, or partly in trust for another person, or for a class of persons, or for the public. It includes a mortgagee vested with a right to possession."

The Honourable Mr. ROGERS:—The word "owner" has been deliberately omitted.

The Honourable VISHVANATH NARAYAN MANDLIK said:—The term "owners or occupants" appeared in the present Act, and had been used by the High Courts in their decisions, and he thought the words should be retained.

His Excellency the PRESIDENT:—What does the Honourable Mover say?

The Honourable Mr ROGERS:—I say it makes no difference to the private rights of the parties at all. "Landholders" includes all owners.

The Honourable the ADVOCATE GENERAL:—As far as I understand, it does not interfere with any rights; but we merely use the word "landholders" instead of "owners or occupants."

His Excellency the PRESIDENT:—The object of the section is to compel the man in possession to keep up the boundary marks; and if you do not use the term "holders" there may possibly be some mistake as to whether he is the owner or occupant.

The Honourable Vishvanath Narayan Mandlik:—We might say "landholders or owners."

The Honourable Mr. Gibbs:—But "landholder" is described to include "owner" and we do not need to multiply words in the Act.

His Excellency the President:—If the honourable member has "owner" inserted, it will facilitate his argument when he comes to the definitions.

The Honourable Vishvanath Narayan Mandlik:—I do not want "owner" to be defined. It was not defined in the Survey Act, and it was used deliberately.

The Honourable Mr. Rogers:—If it is used, it should be defined.

The Honourable Vishvanath Narayan Mandlik:—I have no objection to its being defined in any way the Council may think proper; but, if the Honourable Mover says it has been deliberately omitted, I beg to move that it be inserted.

The Honourable Mr. Gibbs:—There was a great argument whether we should use the same words in the Bill as in the existing law, and I think the Legal Remembrancer was asked to define "owner," but preferred not to do so, it being rather difficult to define every kind of owner.

His Excellency the President asked the Honourable Mr Mandlik whether he wished to divide the Council on the point. His Excellency stated that he should vote with the Honourable Mover of the Bill. If the honourable member liked, he would put the question to the Council.

The Honourable Vishvanath Narayan Mandlik said :—The Council has already reserved decision of a similar point in connection with another section, and perhaps this had better be deferred also.

The question was accordingly postponed, consideration of other sections in which the word "holder" is used being also deferred.

When Chapter X. was reached, the Honourable Vishvanath Narayan Mandlik said :—He might mention in regard to this chapter that it was a subject which was much discussed in—and upon which there had been considerable difference of opinion amongst the members of the Select Committee ; and he had understood the city surveys to be agreed to, provided that—

His Excellency the President :—To which section do you refer ?

The Honourable Vishvanath Narayan Mandlik :—I am speaking of Chapter X. generally, because I think it will facilitate matters if I take up the subject at once and go through it so that it need not be taken up piecemeal afterwards. The subject came before the Select Committee for the first time as a new project of law to be introduced into this Code, because by a series of rulings by the judges both of the late Sudder Court and of the High Court it had been decided that Regulation XVII. of 1827 was not applicable to village sites and towns sites. The subject came before the Council first in 1868, and a law was passed (Act IV. 1868) giving Government the power to make the revenue regulations applicable to towns and cities to which they wished these regulations to be extended, under certain restrictions. The tenth chapter now proposed to be included in this Code was a new project, and I was led to understand that although

the law gave Government the power of extending the survey to all villages and towns in the Presidency, it would be worked in such a manner as not to inflict hardship upon the people concerned. I say this in reference to certain sections which we shall presently have to consider. In some towns the people have to pay certain fees, and then arrangements are made for the survey of their sites. The question was in regard to exemptions from the payment of land revenue, which question was determined by the Council in 1868 by limiting the period of enjoyment to five years, that is to say, if a landholder or "owner," as I would call him, had been in possession of a house site for five years without paying anything, that fact was sufficient to entitle him and his holding to exemption from the payment of Government revenue on account of that site hereafter. As a compromise, seeing that it was intended for the benefit of the people to introduce the provisions of Act IV. of 1868 into all towns and villages, I assented; it being understood and agreed by the members of the Select Committee, with the exception of Mr. Rogers and Colonel Anderson only, that possession for five years was to entitle to exemption. By Chapter X. of the Bill as at present drafted, I now find that the Inam Acts are to be applied to the determination of such questions. Now these town and village sites have always been property of a very peculiar character, and even the most advanced political economists have always made a distinction between a house site and any other kind of landed property, whether agricultural fields, or gardens or any other description of property whatever. A house is something upon which a man lays out very large sums of money—perhaps in some cases out of proportion to his real means—but in so doing he makes a provision for himself and posterity to the best of his means and judgment. All these sites have been, as a matter of fact, up to this time, free from taxation throughout this Presidency. When the Select Committee came to consider this question, circulars were addressed to various Collectors inviting opinions, with the result that throughout the Maratha districts the Collectors reported in favour of the opinion I have always held, and which I then stated to the Select Committee, that this description of property had always been considered to belong to the people, and had been held free of taxation.

The Honourable Mr. Rogers questioned the accuracy of the statement as to the Collectors' opinions.

The Honourable Vishvanath Narayan Mandlik said he had quoted from the summary of the opinions printed and laid before the Select Committee.

The Honourable Mr. Rogers :—I do not agree to that summary as accurately representing the opinions of the Collectors.

The Honourable Vishvanath Narayan Mandlik :—I am merely alluding to the document that was laid before us. I am prepared to uphold, and I think to verify my opinion before a Committee of this Council or any other Committee that might be appointed by Government. I said then, and I say now, that in regard to these house sites, no attempt should be made to have any inquisitorial proceedings as to title ; and all the provisions of the Act of 1868, if we are going to extend that Act throughout the Presidency, ought to be made applicable to the whole Presidency. If there was a reason why in 1868 the Council should adopt the limit of five years as the period of enjoyment to entitle a man to exemption from a tax on his house site in certain towns or cities to which the law was then applied, there is no reason why the same rule should not now be held to be applicable, as well as the other provisions of the Act, throughout the Presidency. No doubt the Honourable Mr. Rogers stated very strongly with regard to Guzerat that he was of opinion there was a different state of things there ; and on that understanding a clause was introduced (which also has been removed from the present draft of the Bill) making a special provision in regard to the Guzerat districts. As regards the character of house property, it is held to be property of a very sacred description throughout this Presidency, and I have no doubt, throughout the rest of India also ; but in the Maratha country particularly, *gharband*, or house site has never been taxed by the State, and I would request the Council to take this matter into very serious consideration. Why are we now to go beyond the law of 1868, when the question was deliberately discussed ? And if surveys of certain large towns have been conducted satisfactorily under the Act of 1868, and there has been no complaint, why are we now to introduce the Inam Act of 1852 and the Summary Settlement Acts of 1863 for investigation into sites in all towns and villages ?

Proof of possession will have to extend over a period of 60 years; very difficult and intricate inquiries will have to be instituted, and for what? The effect will be to disturb the relations of Government with its subjects in a manner in which they ought not to be lightly disturbed. As the Government adopted a certain line of policy in 1868, that ought not now to be disturbed. I may say that I assented to Chapter X. with a few exceptions, on the understanding that the five years' limit was to be preserved; but if that is to be omitted, I shall feel it my duty to oppose this chapter being included at all in the Revenue Code.

His Excellency the President:—May I ask the honourable member what he thinks the effect would be of applying the Inam Act and the Summary Settlement Acts to all towns and villages in this Presidency?

The Honourable Vishvanath Narayan Mandlik:—That whereas people have held these sites as private property undisturbed, Government will have to institute inquiries in every village and town, and people will have to prove 60 years' undisputed possession and produce title deeds where there may be none in existence.

His Excellency the President:—And what would be the effect?

The Honourable Vishvanath Narayan Mandlik:—They would have to pay an assessment on properties which have hitherto been free, and their title to which has not been questioned.

His Excellency the President:—Their title would not be questioned.

The Honourable Vishvanath Narayan Mandlik:—Their possession would be disturbed.

The Honourable Mr. Gibbs:—They would have to pay the assessment.

His Excellency the President:—But their possession would not be disturbed.

The Honourable Mr. Gibbs:—It would, unless they pay the assessment.

His Excellency the President:—Does the honourable member think that many people would be unable to prove their title?

The Honourable Vishvanath Narayan Mandlik :—Certainly, in many cases of simple people who have no idea of the procedure of courts of law, and where the whole inquiry would be one-sided.

His Excellency the President :—You think, then, that most of the village sites would be assessed to land revenue?

The Honourable Vishvanath Narayan Mandlik :—They will be liable to be unfairly assessed. The first result will be to cause a large amount of annoyance to the people and heavy expense to Government; Government will have to institute a sort of investigation and inquiry in all collectorates where they wish to extend this Revenue Code.

His Excellency the President :—I understand you to say that all who could not prove 60 years' possession would become liable to pay land tax on their *gurband*.

The Honourable Vishvanath Narayan Mandlik :—Yes.

His Excellency the President :—And do you think many people would be in that predicament ?

The Honourable Vishvanath Narayan Mandlik :—I think it very likely.

His Excellency the President :—You think many people would be unable to prove 60 years' possession ?

The Honourable Vishvanath Narayan Mandlik :—I think it would be very difficult.

His Excellency the President :—And therefore most of them would come under the land tax ?

The Honourable Vishvanath Narayan Mandlik :—Yes, and previous to that they would be exposed to much trouble and annoyance.

His Excellency the President :—They would have expense and trouble in meeting the inquiry, and after the inquiry they would have to pay land tax.

The Honourable Vishvanath Narayan Mandlik :—Might, and very likely would.

Thd Honourable Mr. Gibbs :—I understood that in the Select Committee we came to a compromise. We agreed, I remember, to the five year' clause ; and I am in favour of that now.

His Excellency the President :—Under this section there would be a large increase of the land-revenue.

The Honourable Mr. Gibbs :—I do not think it is worth the candle.

The Honourable Sorabjee Shapurji Bengali:—One-fou-th of the people of Bombay even, where there is more intelligence and enlightenment than in some parts, would not be able to prove their title.

His Excellency the President:—Oh ! yes, they would all be able to prove 60 years' possession. As I understand it, they would almost to a man prove 60 years' possession. Why, all the land in the City of Bombay was given at least 150 years ago. A man might not prove his own possession for 60 years, but he could prove that he got his land from so and so, who in turn had it from so and so,—and so on.

The Honourable Sorabjee Shapurji Bengali:—Many titles in Bombay are very uncertain.

His Excellency the President :—But any man in Bombay could prove that a particular site has been in his possession and in the hands of his predecessors for upwards of 60 years.

The Honourable Mr. Ravenscroft:—I have no doubt that the great majority of the house-owners in Bombay could.

The Honourable the Advocate General said he did not think the Honourable Mr. Mandlik had quite stated all the circumstances of the case. A man must not prove possession for 60 years, but that possession must be under a certain tenure.

The Honourable Vishvanath Narayan Mandlik :—Yes, that is one thing I forgot to mention. The possession must be proved to be under one of the particular tenures which entitle a man to claim exemption.

The Honourable the Advocate General :—Yes, that is most material.

His Excellency the President:—I think the Honourable Mr. Mandlik ought to thank the Honourable the Advocate General for the suggestion, because that makes a great difference in his case. I think the people of Bombay could prove the 60 years' possession, but whether they could all prove the required tenure may be doubtful.

The Honourable Vishvanath Narayan Mandlik :—I know the register in the Collector's Office in Bombay is now so defective that very great difficulty is experienced in the Collector making transfers of property to people who purchase. I had an example in respect to some property which I purchased a few weeks ago, and which the Collector would not transfer to me until one or two other transfers were made.

The Honourable Mr. Rogers :—The Honourable Rao Saheb has made a great point that the Council in 1868 laid down that five years' possession should be a sufficient title to exemption in city surveys, and he accordingly wishes that period of limitation to be applied to village sites. I think if honourable members read through the report of the proceedings of the Council at that time (in 1868) they will find the word "villages" was not mentioned throughout the discussion. The fact is, that village lands and town lands have always been held to be entirely different cases. I have insisted on the circumstances of Guzerat throughout, because I am particularly acquainted with that district ; and since the opinions of the Collectors have been given, I equally insist on the circumstances of the whole of the Deccan and other parts of the country being very similar. I consider that what I have found to be the case in Guzerat is the case throughout the country, viz., that village sites entirely differ from town sites. The town sites are the private property of the owners, but village sites were originally given in connection with the cultivation of the land. A man coming to settle in a village had not only land given to him to cultivate, but also a site to build his house on : the one was connected with the other ; and so far is this the case, that even now, in certain villages that are held on *quasi* proprietary titles in Guzerat, if a man leaves the village he surrenders his house, although he has built it with his own money. On that ground I say the proprietary title to village sites belongs, and

has always belonged, to Government. As I said before, this view was not, as far as I am aware, laid before the Council in 1868. I am perfectly sure that had it been, and had the question been fairly argued, they would not have attempted to extend that Act to all villages in the way in which the Honourable Rao Saheb now proposes to do. Act IV. of 1863 was only meant to be enforced under special circumstances and with the special sanction of Government; it was not a measure proposed for universal adoption throughout the country. My object is to declare the proprietary title in village sites to be the property of Government. We do not mean to interfere with them in any way, and I see no necessity for carrying out the frightfully expensive inquiry which the Honourable Rao Saheb foreshadows at all. If it should be found necessary to extend Act IV. of 1868 to villages, or to substitute the powers of this Act, then an inquiry would take place; but as long as Government does not do this, things will remain precisely as they are, and all that the Honourable Rao Saheb has tried to frighten the Council with all the terrible annoyance and expense the people will be put to, are simply matters of his own imagining. The other point which the Honourable the Advocate-General suggested is one of very great importance. According to the custom of this country, and according to the old laws, proof of a title to property does not merely consist in possession for a certain number of years, but that must be accompanied by a title derived from a tenure which is recognized to have existed. Now the only title which can be recognized to have existed with regard to village sites is the title in connection with the land the man cultivates, and therefore you might say that, as long as a man cultivates land in the village, he has a right to a site in the village to live upon. So far we should never think of disturbing his possession at all; but if he gives up the land, then, according to the custom of the country, he must give up the site too. Our custom is not to enforce this, we do not interfere to that extent, but it is merely a matter of grace,—I mean to say that we have the right.

The Honourable Mr. Gibbs:—That is in Guzerat, but it is not so necessarily in all parts; the Collectors say it is not. I am not prepared, for instance, to say it is the same in the Maratha Country.

The Honourable Mr. Rogers:—I think the opinions of the Collectors will bear me out.

The Honourable Mr. Gibbs thought the summary of the opinions —signed by the Chief Secretary to Government—which was before the Council, was correct. It was quite correct enough for the purposes of the Council; and unless the Honourable Mr. Rogers had the experience of the Maratha Country that he had of Guzerat, he should hesitate to accept all the honourable gentleman had told the Council.

The Honourable Mr. Rogers :—I may mention that when this Act went before the Government of India, they objected to the provision extending the five years' exemption to villages. They wrote— "It appears to the Government of India that, while it may involve no serious injustice to the State in large cities, it is questionable whether it could, without unnecessary and unjustifiable sacrifices of public interests, be applied to all villages, &c.

The Honourable Vishvanath Narayan Mandlik :—The whole chapter may be left out. I have no objection to that.

His Excellency the President :—Clearly, according to that, the five years' limit could not be inserted.

The Honourable Vishvanath Narayan Mandlik :—I do not know whether Mr. Rogers has concluded. I should wish to make a proposal, if necessary.

The Honourable Mr. Rogers :—I have merely spoken to the general principle of the question.

The Honourable Vishvanath Narayan Mandlik :—The Government of India have called the whole of this an innovation.

His Excellency the President :—I think they object only to the five years' limit. What I mean to say is, the Government of India do not characterize the whole chapter as an innovation. They merely characterize the insertion of a single provision as novel.

The Honourable Vishvanath Narayan Mandlik :—The Government of India says this is a codification of an existing law. What I was going to state is, that in the existing law there is no such chapter as is now proposed to be inserted in this Code.

The Honourable Mr. Gibbs :—I understood Mr. Rogers to say that as far as villages are concerned it is new. As far as I under-

stand it we are including in the Code the Act of 1868, *plus* the extending it to villages. The High Courts have held that this regulation does not apply to villages: and therefore we are going to make a new law. That is what the Government of India say; it is not a codification, it is a new law.

The Honourable Vishvanath Narayan Mandlik:—I wish to propose that the section be framed as it was agreed to by the Select Committee, except two members, and that the existing exemption may be continued.

The Honourable the Advocate General:—The essential difference is this—that in the one case villages would be exempt that have not paid assessment within the last five years, and in the other case they would be assessed unless it could be proved that they have been held wholly or partly free, under a tenure recognized by the custom of the country, for 60 years.

The Honourable Vishvanath Narayan Mandlik said he wished to propose that the draft clause agreed to by the Select Committee and printed in a previous draft of the Bill should be inserted in place of the present Clause 208 *c*.

His Excellency the President asked for the clause proposed to be substituted, and the Honourable Mr. Gibbs handed to his Excellency a copy of a previous draft of the Bill in which the clause referred to by Mr. Mandlik was printed as agreed to at that time by the Select Committee.

* * *

The Honourable Mr. Mandlik submitted the following clauses to be substituted for the present Section 108 *c*:—

"Section 208 *c*. (171).—In villages, towns, and cities, to which Bombay Act I. of 1865, or Bombay Act IV. of 1868, has not been applied, the existing exemption of such lands from payment of land-revenue shall be continued if they have been held wholly or partially exempt from the payment of land-revenue for a period of not less than five years before the passing of this Act."

"Section 208 F. (172).—Nothing in Section 208 *c* shall be held to affect the right of Government whenever it may appear necessary,

to assess to the land-revenue the building sites in all villages, not being kusbas, in the districts now known as the districts of Ahmedabad, Kaira, Broach, Surat, and the Panch Mahals."

His Excellency the President :—I understand that the Honourable Mover objects.

The Honourable Mr. Rogers :—Decidedly ; and I support the section as it now stands.

His Excellency the President :—It is rather important ; would the Council mind this point being reserved.

The Honourable Mr. Gibbs :—I presume it had better be according to the mode in which we are proceeding.

The Honourable the Advocate General :—I suppose, if there is a division now, the Council will be bound by the result.

The decision of the question was postponed.

The Honourable Mr. Rogers said he had several amendments to propose to Section 211, which were rendered necessary by the withdrawal of the Bill to amend Act IV. of 1868.

The Honourable Vishvanath Narayan Mandlik said he had an amendment to propose in reference to the same Bill, and in regard to the arrears of *sunud* fees.

The Honourable Mr. Rogers said he first proposed to insert after the words " any town or city containing more than two thousand inhabitants," in the 5th line, the words " into which the Bombay Municipal Act has been introduced." He next proposed to omit the words from line 12 to the end of the first paragraph, and to insert instead a clause providing that the survey fee should be payable in any town or city in which (Bombay) Act IV. of 1868 was in force before the passing of this Act ; public notice being issued by the Collectors within six months after the passing of this Act, and provided that in any such town or city no survey fee shall be leviable when fee has already been paid by the landholder for a *sunud* obtained by him under Section X., Act IV. of 1868.

Mr. Rogers said :—That would provide for a notice being issued according to the Bill as agreed to by the Select Committee, in towns

into which the Act had been introduced, so as to give the people opportunity to take up *sunuds*, and it would also oblige people to pay survey fees where they had not taken up their *sunuds*, in towns like Ahmedabad. This portion of the amendments referred to the subject of the Honourable Rao Saheb's objection.

The Honourable Vishvanath Narayan Mandlik said it was very difficult to grasp impromptu amendments introduced without any notice and without any time being allowed to consider them; but as far as this Section was in the terms of the Bill which had been withdrawn, and provided for compelling the payment of *sunud* fees for *sunuds* prepared under Act IV. of 1868, he opposed it. And, with reference to the proceedings of the Select Committee to which the Honourable Mover of the Bill had alluded, he might remark that he and his honourable friend Mr. Bechardas Ambaidas had dissented; but there were five members, and they were only two, and in consequence they were in a minority. His objection to the section was that all revenue Acts, in so far as they were retrospective, were objectionable, and that property would be unfairly affected by passing an Act in the year 1877 which would make leviable a new charge under an Act which was passed in 1868.

The Honourable Mr. Rogers :—That is with regard to giving a retrospective effect.

The Honourable Vishvanath Narayan Mandlik :—It would give a retrospective effect to the Act of 1868. I think there are very grave objections in all revenue measures to legalizing retrospective charges, and on that ground, considering it as an infringement of the first principles of law, I think this Council ought not to give its sanction to making the *sunuds* compulsory. If they were not compulsory before, they ought not to be made compulsory now. As to what may be done under a different state of things, that is another matter. But to say that a certain thing which was illegal in 1868 is to be made legal in 1877, appears to me to clash with the first principles of jurisprudence.

The Honourable Becherdas Ambaidas :—As I made my minute concurring in the Honourable Rao Saheb's dissent from the view of the majority of the Select Committee some time ago, without saying any thing, I now beg to say that I oppose the section for making the

sunuds compulsory, because it contains a provision for levying a new tax retrospectively. If a man gets a benefit he ought gladly to pay for it, but the city surveys were first introduced in opposition to the wishes of the people, and in many cases they were so conducted that the results obtained were erroneous. That is one of the reasons why people have refused to take *sunuds* ; and I do not think it is either reasonable or politic to force them upon the people against their own wishes, when the law of 1868 clearly left it to their choice whether to accept or refuse the new *sunuds*.

The Honourable Mr. Rogers :—With regard to the remark of the Honourable Mr. Mandlik and the Honourable Mr. Becherdas, I beg to state that I think there can be no doubt whatever that, when the Act of 1868 was passed, the intention of the Legislature was to make the taking out of *sunuds* compulsory ; but there was some flaw in the wording of the Act, and on cases being taken to the High Court, it was decided that according to the strict wording of the Act the taking out of *sunuds* was not compulsory. A great deal of correspondence ensued, and it was finally settled by the Executive Government that in place of making the taking out of *sunuds* compulsory, there should be a survey fee levied where the Act was introduced, to assist Government in paying the expenses. As to Ahmedabad, in which town the Honourable Mr. Becherdas is particularly interested, I admit that to some extent there may have been mistakes in the measurements ; but still they have been corrected ; and where *sunuds* have been issued it has been after most careful inquiry. I do not see why, when Government are undertaking the expense of surveying Ahmedabad, and people can obtain accurate *sunuds*, they should not pay the survey fee the same as other people whose towns are surveyed.

His Excellency the President :—Does the Honourable Mr. Mandlik object to the levying of fees or the taking out of *Sunuds* ? If there is to be no charge, how is the survey to be made ?

The Honourable Vishvanath Narayan Mandlik :—I do not object either to the *sunuds* or the payment of fees from the date at which it may now be legalized. What I object to is to the Act of 1877, making legal payments, which were not legal before.

His Excellency the President :—All that it is proposed to say is that if a man did not pay last year he must pay this year. There is nothing very wonderful in that. Supposing the Legislature intended to catch a man the year before last, and found the law not quite strong enough, they make a fresh law which will catch him, if they are justified in levying a fee at all.

The Honourable Vishvanath Narayan Mandlik :—All I say is that the Legislature should not, by passing a retrospective law, make fees payable which were previously not payable for as far back as nine years. As for what the intention of the Legislature may have been in 1868, the Honourable Mr. Rogers knows that their intention must be judged from the Act.

The Honourable Mr. Rogers :—It is proposed that notice should be given.

The Honourable Vishvanath Narayan Mandlik :—That does not mend the matter at all.

His Excellency the President:—Suppose an Act was passed with a flaw in it, and was amended the following year, and the fees made leviable then.

The Honourable Vishvanath Narayan Mandlik:—I should not object to that. The circumstances would be different.

His Excellency the President :—But the retrospective principle would be the same.

The Honourable Vishvanath Narayan Mandlik :—No. Take the case of Act XII. of 1863 being passed to make Act III. of 1863 retrospectively applicable. In that case it was well known there had been a mistake made, and it was rectified. The Act of 1868 however, makes it optional to take out *sunuds* or not; and a man may consider it a questionable benefit and refuse to pay the fees; and he is justified by the law of 1868. I submit that nine years is a long time afterwards to alter the principle of the Legislature in that respect.

His Excellency the President :—If a survey of a city has been made with a view to benefit the people, all it amounts to is, that now they will be made liable to pay for the benefit. There is nothing

contrary to the principles of jurisprudence in that. It might be said rather a long time intervenes between the mistake and the correction.

The Honourable Mr. Rogers :—In the case of Ahmedabad the survey was not even finished yet.

His Excellency the President :—I suppose if there is a survey o the city the people must pay for it. How does the Honourable Mr Mandlik propose that it should be paid for ?

The Honourable Vishvanath Narayan Mandlik:—I say if there is to be a survey instituted now under certain conditions those conditions ought to be observed—but old laws ought not to be lightly altered in this manner. Supposing, for instance, an assessment was levied on certain lands, under certain rules, in 1850, surely it cannot be said that that may be altered by an enactment passed in 1877; and the principle is the same. What may be done in the case of Rs. 2 may be done in regard to Rs. 200; there is a fine of Rs. 5 made payable by each holder, and there may be 5,000 holders.

The Honourable Mr. Rogers:—Do you call it a fine ?

The Honouroble Vishvanath Narayan Mandlik :—If it was introduced against my wish. All these things are to be judged by proper standards. A payment may not be a fine if I assent to it, but it may be a very heavy fine if I do not assent to it.

His Excellency the President:—You could not say every payment made without the assent of the payer is a fine. The majority of the Committee appear to have been in favour of this provision.

The Honourable Vishvanath Narayan Mandlik:—No doubt they are. What is a fine is well known to be merely a punishment for an invasion of the law, imposed by sovereign authority.

The Honourable the Advocate General said:—The section in the existing Act was Section X., which provided that "the Collector after inquiry, shall grant a *sunud* or *sunuds* ;" and Government were advised that according to the wording of the section they could not issue *sunuds* save on the application of the holder, and therefore the *sunud* fee could not be recoverable.

His Excellency the President suggested that the amendment had better be printed and circulated to each member, and the point reserved for decision at a future meeting.

This course was agreed to.

In regard to Section 212 the Honourable Vishvanath Narayan Mandlik said :—There was a decision of the High Court which stated that the fine therein provided, according to the wording of the existing Act, should only be levied in reference to Government lands under the Survey Act.

The Honourable Mr. Gibbs:—If I understand the decision rightly, it is exactly contrary to what this section, as drafted, provides. If we do not accept the High Court's decision, then we may pass this section.

His Excellency the President:—The decision referred to, I suppose, is an exposition of the law as it stands. The Council are now framing a new law.

The Honourable Vishvanath Narayan Mandlik:—Codifying.

His Excellency the President:—Codifying and amending.

The Honourable Vishvanath Narayan Mandlik:—Yes, but if an amendment proposed derogates at all from the rights of private property—

His Excellency the President:—What I mean is, that this decision is not binding on the Legislature. We are not considering what the law is, but what the law ought to be. The functions of the High Court are more limited than in the case of the Council.

The Honourable Mr. Rogers:—May I be allowed to observe that this section is Section 7 of Act IV. of 1868, as it at present stands ?

The Honourable Vishvanath Narayan Mandlik said the point was in regard to the appropriation of private agricultural land ; if it was the property of individuals, it was not liable to be punished by a fine.

His Excellency the President :—What is the alteration the Honourable Member wishes to have made ?

The Honourable Vishvanath Narayan Mandlik:—I would insert the word "Government," so that the section may read—'if any *Government* land within the site of any village, town, or city," &c.

His Excellency the President:—I suppose if there is a cultivated field and a man chooses to build a house upon it, he must pay a certain assessment.

The Honourable Vishvanath Narayan Mandlik:—But according to this section he must pay something more than that.

His Excellency the President suggested that the Honourable Mr. Mandlik should draft an amendment, which would be printed and circulated, and discussed at a future meeting.

The point was accordingly reserved.

In regard to Section 212A, the Honourable Mr. Rogers said:—It had been inserted for the purpose of giving some kind of effect to the settlement of titles to house property by the officers employed under Act IV. of 1868. It had been found that persons would not take out summonses for 6, 7, or 8 years, and would then suddenly come forward to dispute a settlement, having been engaged in preparing false evidence all that time.

The Honourable Vishvanath Narayan Mandlik said he did not object to the Section but he did not think any cases were brought to the notice of the Select Committee. He accepted it because there ought to be some limit to every litigation. He did not know, however, that any false cases had been set up under the Act.

The Honourable Mr. Rogers:—There is the opportunity.

The section was passed.

In regard to Section 237G. the Honourable Vishvanath Narayan Mandlik said he had raised an objection in the Select Committee in reference to the last clause of this section, that if a village was attached simply on account of arrears of revenue and the owners applied for restoration, according to the present practice, there was no reason why he should not, in addition to the surplus proceeds of one year have also the surplus of the previous years. The answer he had received was that it was the custom; and his reply to that

was that such a custom would be "more honoured in the breach than in the observance." The Council were asked to pass a new law limiting the right of restoration to 12 years, whereas formerly a man could ask to be reinstated after 30 years; and if they were going to limit the right of restoration they might well consent to the return of the surplus, if any, of all the years of the attachment.

His Excellency the President:—What does the Honourable Mover say?

The Honourable Mr. Rogers:—It depends a good deal upon what tenure is considered free. If a tenure is considered proprietary, the holder would have a right to all the surplus receipts refunded.

His Excellency the President:—But does not this section as worded apply to all cases?

The Honourable Vishvanath Narayan Mandlik:—Yes, Mr. Rogers' observations led me to make my remarks general, or I should at once have referred to Khote villages; and though I may be an Inamdar as well as a Khote, I am a British subject and have a right to protect the rights of other British subjects. The Government have been pleased to restore villages and the surplus proceeds even after 30 or 40 years' attachment, and what is the use of keeping such a soleecism as this provision about the one year's proceeds if we are going to limit the right of restoration to 12 years?

His Excellency the President:—Could a man claim 50 years' arrears?

The Honourable Vishvanath Narayan Mandlik:—I am told that Government, as a matter of grace, have returned such arrears.

His Excellency the President:—That must have been a great exercise of grace.

The Honourble Mr. Rogers:—There are cases in dispute though.

The Honourable the Advocate General:—I believe there was a decision by the High Court in the case of Khote villages in which Government withheld the arrears.

The Honourable Vishvanath Narayan Mandlik:—That was a judgment of Sir Joseph Arnould's against which a good deal might be said.

The Honourable the Advocate General:—It has been before Sir Richard Couch and confirmed.

The Honourable Vishvanath Narayan Mandlik:—But we are not considering the case of the Khotes now.

The Honourable Mr. Gibbs:—No, this is a general law.

His Excellency the President:—This section applies, apparently, to all landholders, whether they are Khotes or not.

The Honourable Mr. Rogers:—As it stands it merely leaves matters at the disposal of Government, and previous experience shows that Government are not disposed to deal hardly. In the great majority of cases the whole surplus proceeds have been given back, and I believe it is only in the case of Khote yillages that the right is disputed.

The Honourable Vishvanath Narayan Mandlik:—I would beg leave to mention in reference to the class of landholders of whom I am nominally one, though I have comparatively very little pecuniary interest,—I mean the class of Khotes—that I think it behoves the members of this Council to consider, that when they have passed Acts to relieve the property of insolvent holders like those of Broach, Ahmedabad, and Sind, they should take into account those people who have brought the arid district of Ratnagiri, where there was not a high road until about 12 years ago connecting it with Tanna, to its present condition, These are the men whose claims are under the consideration of Government.

His Excellency the President:—Have there been great improvements in the cultivation of the Ratnagiri district?

The Honourable Vishvanath Narayan Mandlik:—Yes, and those improvements have been due to the Khotes; and if this section refers to a class of landholders such as the talukdars who have become insolvent, the Government should be indulgent to more deserving people.

His Excellency the President:—But the Khotes are not insolvent.

The Honourable Vishvanath Narayan Mandlik:—I should say that the man who holds himself solvent and respectable is more

deserving of indulgence than one who has a halter round his neck.

The question then dropped.

In regard to Section 251, the Honourable Vishvanath Narayan Mandlik suggested that a clause should be inserted providing that sales should be registered. Cases were always turning up in one shape or another at the High Court.

The Honourale Mr. Rogers:—At whose cost? Some one would have to pay for the registration.

The Honourable Vishvanath Narayan Mandlik:—The purchaser should pay.

The Honourable Mr. Rogers:—Has this Council power to insert a clause of that kind? Would it not interfere with the Registration Act?

The Honourable Mr. Gibbs:—We should only be obliging a person to take advantage of the Registration Act. The clause would not affect the Registration Act.

The Honourable the Advocate General thought the section would be trenching on the Evidence Act and also on the Registration Act. He proposed that the words "and such certificate shall be conclusive evidence of a valid transfer of such occupancy or alienated holding," which occurred at the end of the section, should be struck out; and then the law might be left to take its course.

His Excellency the President:—Yes, or our Act might be disallowed.

The amendment proposed by the Honourable the Advocate General was adopted, and the concluding portion of the section, after the word "refers," in 13th line, was struck out.

* * *

The Honourable Mr. Gibbs:—We have now Chapters 6, 6-A, 6-B, and 8 to go through; and those chapters in which a great many objections occur.

The Honourable Mr. Mandlik:—Yes, many sections have been embodied in this Code, especially in chapter 6, to which I object. They are entirely new law.

The Honourable the Advocate General:—There is a good deal in chapter 6 which affects the site question, and will depend on its decision.

His Excellency the President:—Then the question is what are we to proceed with next. Would it be best to have the questions argued out about the definitions.

The Honourable Vishvanath Narayan Mandlik:—I should certainly propose an adjournment for at least a week.

His Excellency the President:—Would you mind telling me which are the sections of chapter 6 to which your objections apply ? I understand the objections regarding occupants and owners, and also that referring to alienated lands.

The Honourable Vishvanath Narayan Mandlik said his objections would apply to Sections 106, 107, 110, 115, 117, 118, to 121 119, 120, 120-A, 123, 123-A, 123-B, 124-D, 123-E., 124. He added that his objection to Section 124 was to the appropriation of land for the purposes of agriculture. His contention was that if a man was the owner of a piece of land he could do as he liked with it; if he was simply an occupant, he might be restricted in the terms which governed his occupancy.

His Excellency the President:—What is the exact point ? Suppose a man builds a house upon cultivated land, the question then arises at what rate he is to pay for it.

The Honourable Vishvanath Narayan Mandlik:—He pays at the rate at which the land is assessed until it is altered at the next survey settlement, if the land is his property.

The Honourable Mr. Rogers:—By rules that have been passed by the Executive Government, houses that have been built on Government land have an extra assessment put on them.

The Honourable Mr. Gibbs:—If it is Government land the assessment changes, but if the holder has a tenure which gives proprietorship he can do as he likes with his land without extra assessment.

His Excellency the President:—I understand the honourable gentleman to say that if the land is *miras* the owner can build upon it without paying extra; but if it is not *miras* he must pay extra.

The Honourable Mr. Rogers:—I acknowledge that if we use the terms "alienated lands."

The Honourable Vishvanath Narayan Mandlik:—And so we get round again to the question of alienations—If *miras* is private property.

The Honourable Mr. Rogers:—There is no such thing as *miras* in the survey records. It is merged in some superior definition under Act I. of 1865.

The Honourable Mr. Gibbs:—It is not used in Guzerat, but in the Deccan it is. I have decided several cases.

The Honourable Vishvanath Narayan Mandlik:—I should like to see the definition in which it is merged.

The Honourable Mr Rogers:—We do not acknowledge *miras*. In our revenue books *miras* does not appear.

His Excellency the President:—Does the High Court use it? Are Counsel called to order for using it?

The Honourable the Advocate General:—I am afraid Counsel use it, and the Chief Justice has used it in his decisions.

The Honourable Mr. Rogers:—The revenue records do not acknowledge it.

The Honourable Vishvanath Narayan Mandlik:—Then I am sorry for the revenue records. The custom of the country acknowledges it if the Revenue Department does not. I will read an extract from a recent High Court judgement:— "Although the lands of the plaintiff are rice lands, situate in Soonda, Payen Ghat (that part of Ankola known also as the Panch Mahals, where Munro has said that all rice lands belong to Government) and although the plaintiff has not produced any patta, sanad, or other document of title granting to him, or to the persons under whom he claims the proprietorship of the soil in any of the vargs in his possession, yet we think that the admission, contained in the Government books, that seventeen of those vigars are held by him on Muli tenure, must be regarded as establishing in him the hereditary and transferable proprietorship in the soil of those 17 vargs. The Muli, the Mirasi, the Kamytchi, the Swasthyam and the Janmakar

tenure, are merely so many various names for the ancient proprietary right of the rayut in the soil recognized by Mr. Ellis of Madras, Mountstuart Elphinstone, Lord William Bentick, Professor H. H. Wilson, the Madras Board of Revenue, and other eminent authorities." I am sorry for the Revenue Department after that.

His Excellency the President said that old phrases were often superseded by new phrases, and observed that the section about tenants' rights appeared to be very well drafted.

The Honourable Vishvanath Narayan Mandlik :—Regarding its English I would say nothing, but as a piece of legislation it is of about as revolutionary a character as could well be imagined. I do not wish to be unparliamentary, because I understand the section was drafted by the learned judges of the Court in which I practise.

The Honourable Mr. Mandlik further said that he objected to Section 178.

His Excellency the President suggested that chapter 8, with the exception of the 178th Section, might be taken as read, in order to narrow as much as possible the point to be reserved for a debate at a future meeting.

The Honourable Mr. Gibbs said :—The Select Committee went through chapter 8 as it now stood, with the exception of a very few alterations, chiefly verbal ones. It might be well to postpone its consideration to the next meeting, if Colonel Anderson was likely to be present.

His Excellency the President :—If there should be any point on which he wishes to say anything he can bring it forward specially, we shall not pass the sections now finally.

The Honourable Mr. Rogers :—The chapter does not differ from Acts I. of 1865 and IV. of 1868.

The Honourable Mr. Gibbs :—But they have been chopped and changed about considerably.

His Excellency the President :—That is the work of the Select Committee. It is quite impossible that the Council can be responsible for every word of a Bill when it has been considered by a Committee. Every Legislature must trust to Committees to prepare the details.

The Honourable Vishvanath Narayan Mandlik :—That was done, but as I stated yesterday the draft of the Bill as finally arranged was not received by me in time to study it. I went through the 9th and 10th chapters for discussion in the Council to-day. I cannot pledge myself to any suggestions I may make now regarding the 6th and 8th chapters being final. I wish as far as possible to save time, and I think as Mr. Rogers says that chapter 8 contains only a few sections, it may as well be considered together with chapter 6.

His Excellency the President :—I think we might take chapter 8 now, reserving Section 178.

The Honourable Mr. Rogers :—It may be easily done by taking Act I. of 1865 and comparing the section as we go on.

His Excellency the President :—It really appears to me as if some honourable members consider the Council should act as a Special Committee, when we have the responsible signatures of a Special Committee before us.

The Honourable Mr. Gibbs :—It has been the custom rather to trust to the Committte of the whole Council. We went through the Watandars' Bill three times. In fact, your Excellency's predecessor had an idea that Select Committees were a mistake, and that all the work should be done in the Council.

His Excellency the President :—That may be a matter of opinion ; but Select Committees are recognised by the law. It would be hard on an honourable member who has devoted his time and labour to going through a Bill over and over in Committee, to go through it again in the Council. When a number of sections have been carefully considered by a Select Committee and they have presented a responsible report with their signatures attached, I think it is hard to expect them to go through the whole work again. Besides, we in full Council are more likely to make some mistake. It is better to trust to two or three gentlemen in Committee.

Chapter 8 was then gone through ; Sections 178, 182, 186, 188, 196 and 197 B being postponed.

* * *

DISSENT.

(BILL No. 1 OF 1875.)

There seems to be some misapprehension in regard to our views on the Revenue Code Bill. For, at the meeting of the Council on the 25th January 1875, one of us distinctly objected generally to the making of new laws in derogation of the rights of the people, when the object of codification was stated to be more or less a matter of departmental convenience. And as the work of the committee progressed, we have distinctly intimated that we should object to those sections which threw upon the private owners the burden of proving their propetty to be their own, whenever revenue officers should put them to the proof of it. (Section 106 and 115.) In other respects also we have frequently stated our differences during the progress of the Bill; and we should have signified the same in a minute before in due time, had the revised Draft of Chapters VI. to XV. been ciaculated, as we had requested it should be.

As now recast, the Bill appears to us entirely to ignore private rights in land. This is altogether unjust. Watandar landholders of various classes and denominations throughout the presidency have rights of property in the soil, and have been held to be proprietors in the proper sense of the term (Vyavahara Mayukh, Chap IV., Sec. I., 8; Stoke's Hindu Law Books, p. 44; *Vaikunth Bapuji* vs. *The Government of Bombay*, XII. Bom. H. C. R., App. pp. 1—224; *Ganga Govind Mandal* vs. *The Collector of 24 Parganas*, XI. Moore's I. A., p. 345; Elphinstone's History of India, third edition, pp. 249, 250, Appendix V.) Even in Guzerat, the reports of Settlement Officers—Messrs. Pedder, Trevor, and others —show distinctly that village sites have been private property The Bombay Survey Act I. of 1865 speaks distinctly of owners and of lands belonging to private individuals; and yet the term *owner* has been omitted from the new code, and the definitions 25 and 25A. have been so framed as to give the idea, that private ownership in land does not exist in this presidency. Again, the definition of the word '*alienated*' is to a certain extent inaccurate, and also indirect-

ly destructive of private rights. When we speak of "alienations" the word is ordinarily used in reference to the public revenue. It is well known that when lands belonging to private individuals were granted in Inam by Native princes, they were purchased from their proprietors and then bestowed on the dorees. (V. Bombay B. R. A. S. Journal, P. 39).

It is clear that private property of this kind in land ought to distinctly set forth and distinguished from Government lands; and yet the definitions 'alienated' and 'occupant' together create the greatest confusion; for, according to the present terminology, an unalienated field is one that has not been transferred so far as the rights of Government revenue are concerned. But what it really is, the code does not say; and the point becomes important in disposing of various questions in regard to appropriation, forest rights, alluvion, and others in different parts of the Code. For, while Government may do what it likes with its own, it has only by law the right to impose, under certain rules, an assessment on all private lands liable to be assessed, and in a Tanna case (*Dadabhai Bamanji* versus *the Collector of Tanna*), the High Court have distinctly held that a *sutidar* at Bandora building on his land which was assessed as an oart was not liable to be fined by the Collector.

Again, the question of tenant-right in paragraph 2 of Section 134 is one to which we have serious objections. Hitherto the burden of proof has always been laid on the tenant, who must prove a perpetual tenant-right before he will be allowed to hold adversely to his landlord. Where a tenant shows that he is a resident of a village from a period anterior to the date of the grant in Inam, &c., the onus has shifted to the landlord, but in other cases it has been as above stated. And there is no reason why these relations should now be disturbed. There is nothing to show what the word antiquity means; and the working of this provision will, therefore, be quite uncertain. Even where the Legislature has created new occupancy-rights they have been declared to be non-transferrable.

Another point upon which we differ is Section 203C, as now published in the Draft Bill; and the companion sections. The result of inquires has shown that in all the Maratha districts, certainly,

village sites have been proved to have never paid the land-tax from times immemorial, and we had understood that the Honourable Mr. Rogers and Colonel Anderson alone were of a contrary opinion. Why the present change is made in Sections 171 and 172, as published in the second edition, after they had been modified in the draft, as printed at pages 75 and 76, is not clear. The question of exemptions of such sites was fully discussed at the time of the passing of Bombay Act IV. of 1868, and we do not understand why a different rule is now to be made when no mischief has been pointed out to have arisen from the working of the old law during the last nine or ten years.* These house-sites have been declared uniformly by the Judges of both the Sudder and High Courts not to have been assessable under Regulation 17 of 1827, And although a *post-facto* enactment of an arbitrary character (as we must with all submission designate Act X. of 1876 of the Government of India) gives a new interpretation to the law after fifty years of judicial rulings to the contrary, we think that it would not be safe to tax this species of private property in an exceptional manner under the operation of the Inam Commission Acts. Economists even of the most advanced school, have admitted the peculiarity of house property over all descriptions of private property; and in this presidency, where *Gharband* (house-site) land has always been held to be so peculiarly sacred as to form one of the objects by the aid of which the ordeal of an oath is preformed, we think it behoves this Council not to pass lightly a provision of law which will affect such a species of valuable property. But since the Act (No. IV.) of 1868 has been passed, and since it is now proposed to the Council to extend its operation to other towns and villages throughout the Presidency, we should put it to the Honourable Members that the same principles which governed Act IV. of 1868 should guide the working of the extended measure. No Inam Commission principles or machinery should now be revived in reference to the poorer classes of the population.

We also beg to record our dissent from the following section, which, we are told, has been borrowed from the Burma Code of 1876 :—

> "Sestion 126A.—Every occupant's right is subject to the reservation in favour of Government of all mines and mineral

products and of all buried treasure with full liberty to work and search for the same, paying to the occupant only compensation for surface damage, as estimated by the Collector."

The reasons given above suffice for our disapproving of this provision. The Burma law is entirely different from our own. This new law, which disturbs our tenures and quiet proprietary possession of lands for more than sixty years, was not in the first draft nor in the second draft as presented to the Select Committee; and no reasons have been adduced for importing this new section almost at the termination of the Committee's labours.

These are the principal points to which we would draw the attention of the Council before the Councilproceeds to the second reading of the Bill.

VISHVANATH NARAYAN MANDLIK.
MAHOMED ALI ROGAY.

Bombay 17*th June* 1877.

CONSIDERATION

OF THE

LAND REVENUE BILL IN DETAIL.

22*nd June* 1877.

The Honourable Mr. Mandlik moved the second amendment, of which he had given notice viz:—that in place of definition 25, Section III., as drafted, the following should be adopted—"'Occupant" is the person whose name is entered authorizedly in the survey papers, or other public accounts, as responsible to Government for payment of the assessment due upon any field or recognized share of a field." Mr. Mandlik said:—The present definition is "'occupant' signifies a holder of unalienated land; or, where there are more holders than one, the holder having the highest right in respect of any such land; or were such highest right vests equally in more holders than one, any one of such holders." The definition which I propose to substitute for this, is that used in Act I of 1865, the present Survey Act, which, I submit, meets all requirements. After the passing of Regulation 17 of 1827, "occupant" was known to be pretty much as it was defined by the Survey Act of 1865, and the Survey Act has been worked throughout with this definition. The definition which the Bill now proposes to substitute, would create a great deal of doubt and uncertainty, by mixing the terms "alienated" and "unalienated" in matters where there is no necessity that they should be mixed; it unecessarily creates a doubt where there has been none up to this time; and I think, therefore, that the definition I have submitted, and which has been taken bodily from the existing Survey Act, is the one which should be adopted in the Code.

His Excellency the President:—Will any honourable gentleman address the Council?

The Honourable Becherdas Ambaidas:—I beg to make a few observations. The object of the Bill before the Council is to consolidate all the existing laws of the last fifty years, or thereabout, and bring them into one Act, and also to amend and improve the existing law so as to promote the welfare of the people. It seemed, from the discussions that took place at the last two meetings of the Council, that there was a deviation of opinion on several parts of the wide Code and several amendments are now to be proposed by the honourable gentleman in charge of the Bill, and by dissenting members of the

Select Committee, which will either have to be settled by a compromise, or on which the Council will have to be divided, after discussion. I hope the Council will adopt some means to retain the word "owners" regarding land belonging to private individuals wherever it occurs in the corresponding portions of the Acts now sought to be repealed. In regard to Chapter X. of the Bill, I would beg to remind honourable members, that Act IV. of 1868 was accepted as a compromise, as will be seen from the proceedings of the Council when that Act was discussed. I think it would be well to retain the words "owners or occupiers" in place of the terms used in the Bill as drafted.

The Honourable Mr. Rogay asked what were the reasons for changing the definition. He thought there should be some weighty reasons to justify the change.

The Honourable the Advocate-General :—I think the Honourable Mr. Mandlik's amendment is moved under a misapprehension. The Bill is not intended to define the rights of parties in respect of land, but to carry out the survey assessment. For that purpose, it seems to me, the Bill divides the whole land of the Presidency into two classes, viz., land subject to Government assessment, and land not subject to Government assessment, and this definition of "occupant," which is objected to, relates simply to land subject to the assessment. If the honourable and learned mover of the amendment will refer to the commencement of Section 3, which governs the whole of these definitions, he will find it stated that they are definitions simply for the purposes of the Act and nothing else. The words are—"In this Act, unless there be something repugnant in the subject or context," and then come the definitions, which are simply for the purpose of carrying out the operation of the Act itself. There is no attempt to define rights, and the use of the word "occupant" in the Bill cannot, by any possibility, affect any rights whatever in land belonging to individuals. The definition is used simply for the purpose of working the Act, and to show what class of land is subject to assessment.

The Honourable Mr. Rogers :—I oppose the amendment, and support the retention of the definition as at present drafted in the Bill. There was a great deal of discussion in the Select Committee as to these definitions, and it was finally decided to define "occupant".

as in paragraph 25 of the 3rd section, and "hereditary occupant" as in paragraph 25*a*; because it was found that the definition of "occupant" in Act I. of 1865 was not sufficiently broad to include all persons who ought to be affected by the Act. As the definition is now drafted, the operation of the Act will extend to others than those who may be recorded as registered occupants, viz., to co-sharers and co-occupants. It is the definition of the Survey Act of 1865 extended; and the present form is not only more accurate, but the two definitions together are certainly more scientific. The whole of the Bill has been worded in accordance with these definitions. The definition of "occupant," as at present drafted, goes back to the original definition of "occupant" as contained in Regulation 17 of 1827, the words of which are—"The settlement of the assessment shall be made on the co-occupant of the land. When the land is held direct from Government, the cultivator is considered to be the occupant; but when not so held, the person recognized as having the highest right which intervenes between the Government and himself, is held to be the occupant." I think the Council will be of opinion that the definition at present contained in the Bill is more in accord with the original definition contained in Regulation 17 of 1827 than the definition given in the Survey Act of 1865; and I therefore, oppose the amendment, and suggest that the definition should be maintained as at present drafted. I agree entirely with what the Honourable the Advocate-General said.

The Honourable Mr. Mandlik:—The Honourable Mr. Rogers has stated that the definition of Regulation 17 of 1827 is now restored. My reply is that there was no such definition at all in Regulation 17 of 1827. That Regulation provided that the settlement of assessment should be made with the occupant of land (Regulation XVII. Section 3, Clause 1), and "occupant" was only defined in an indirect way. When the Survey Act of 1865 was passed, the provisions of Regulation 17 of 1827 were fully discussed, and the definition which was then drafted, and which is the present law, is the definition which I now wish to have continued in the new Act. It is not a definition which I have framed for the first time, but it is one which has stood the test of time and circumstances. As regards the remark of the learned Advocate-General, that the Act

will not affect rights, but is simply a Survey Act, I should have at once accepted that remark with great pleasure; but a number of sections have been introduced for the first time,—subject, as the Honourable Mr. Chapman, who introduced the Bill, observed, to discussion in the Council—which are entirely new law, and positive law, which will regulate rights as between the Government and its subjects. I may mention Sections 105, 106, and 115, to which I have given notice of amendment. This being the case, although no doubt Section 3 says the definitions are for the purposes of the Act, still the Act is a Land Revenue Code for the whole Presidency, and it will undoubtedly, by changing the *onus* of proof in Section 106, affect the rights of the people in a very injurious way, which neither the Survey Act of 1865 nor Regulation 17 of 1827 had done. This Bill is not merely a codifying of the Survey law, which would not have affected private rights. I submit, that both the direct and indirect effect of several provisions of this Bill will be in derogation of private rights, and, therefore, the definitions ought to be more carefully worded. "Occupant" was a well-known word both in Regulation 17 of 1827 and in the Survey Act of 1865 : and I think the present Bill goes too far beyond those enactments. Scientific accuracy is not all that the Council ought to look to.

The amendment was then put by His Excellency the President to the vote, by show of hands, and was declared to be lost.

* * *

The Honourable Mr. Mandlik next moved that Definition 25*a* (Section 3), instead of as at present drafted, should run as follows:—"A 'survey occupant' is an occupant of land, assessed to the payment of land-revenue under the provisions of this Code." He said;—This refers to a separate portion of the Code, and, therefore comes up as a separate amendment. The definition as drafted stands :—"'Registered occupant' signifies a sole occupant, or the eldest or principal of several joint occupants whose name is authorizedly entered in the Government records as holding unalienated land, whether in person or by his co-occupant, tenant, agent, servant, or other legal representative." This definition of "registered occupant" is entirely a new definition, and the use of the term "unalienated land" simply ignores what the survey has done in regard to a

large number of alienated villages. Scores of these villages have been surveyed and assessed throughout the different districts of the Presidency, and all those people who had been noted down in the survey records, by the survey officers, as occupants of lands in these surveyed villages, are known up to this time as occupants. The use of the new definition will make their tenure different from what it has been up to the present time; and yet in Section 285*a*, which is new section in the present draft "occupants of alienated villages" are referred to as well. I think a great deal of unnecessary confusion will be created by the use of the new definition, and by the division between alienated lands and unalienated lands which is not known in the survey, as conducted under the Act of 1865, except in regard to the defining of village boundaries, which is done in the case of alie nated villages, in a particular manner. I think that the new procedure is utterly unnecessary, and that the definition of "registered occupant," which is now drafted for the first time, will enhance the confusion, and will also, in regard to the occupants of land in alienated villages, have the effect of making almost nugatory all that the survey has done in reference to numerous tenants and landholders in those villages. The definition which I proposed to substitute for that contained in the Bill, as drafted, I have adopted from the remarks of some revenue officers, which were summarized and printed with the second edition of the Code. I consider that all this Code has to provide for, is the assessment of land for purposes of revenue, and if we define "occupant" to mean all that for the purposes of the survey it is necessary that it should mean, we shall be giving the term "survey occupant" as wide a definition as need be.

The Honourable Mr. Gibbs:—These definitions were very fully and carefully discussed in the Select Committee, and the notion of the majority was that, what we had to do in this case was the same as we had to do with regard to the Watandar's Bill, viz., to invent a person who was not known before. I believe I am right in saying that the Select Committee invented the "registered occupant," and they did so in order to simplify the Code from beginning to end. To make use of "occupant" and "registered occupant," as in the present draft of the Bill, is the latest conclusion which the Select Committee arrived at. When the Code first came before us, the

terms "occupant" and "survey occupant" were used, and as we wished to register some other persons than those who were on the Government books, we used a wider and more general definition, and invented "registered occupant" to take the place of "survey occupant." I would further remark that the two definitions (25 and 25*a*) hang together, and so long as one is kept the other must be retained.

The Honourable Mr. Rogers:—After the last resolution of the Council, declining to adopt the Honourable Mr. Mandlik's amendment to Definition 25, the term "occupant" can no longer apply to holders of alienated land, and, therefore, the honourable and learned member's objection that the present definition (25*a*) will interfere with the rights of owners and occupants of land in alienated villages, which have been brought under the survey operation, falls to the ground. Even if that is not so, the matter is fully provided for in the last section of the Bill (285A). As the Honourable Mr. Gibbs has stated, the term "registered occupant" m rely represents what was originally the "occupant" of the Survey Act of 1865, extended so as to include co-sharers and co-owners. This the existing Survey Act does not provide for, and, in consequence, certain difficulties have been experienced in the administration of the revenue. I think the definitions of "occupant" and "registered occupant," as drafted, will be found to provide for every single case; and the wording of the whole Bill has been changed from what it originally was in order to suit the e definitions.

The Honourable Mr. Mandlik:—My objection to the definitions as now printed, and as drafted almost at the close of the Select Committee's labours, is that the Government, by a resolution of 1874, themselves came to the conclusion that the word "occupant" meant a person whose name had been authorizedly entered in a village register or public document as the holder of land from Government. But the Council, having that before them, and having before them also all the definitions that were suggested by the different officers to whom the Code was referred, have taken the term "registered occupant" to mean co-owner, and various other things, which I think were included in the shorter definition. No doubt, my definition may not refer to alienated or unalienated villages; but I have done my best to include in the definition, which I have proposed, all that

is contained in the idea of who a survey occupant ought to be, according to the information supplied by the district officers.

The Honourable Mr. Gibbs:—May I ask the Honourable and learned member what the position of the Council would be supposing that, having rejected his amendment on the definition of "occupant" (paragraph 25), we now accepted his amendment on this definition (25 *a*) of a "registered occupant"? We should be rather in a difficulty, I think.

The Honourable Mr. Mandlik:—I do not think so. A survey occupant is an occupant of land assessed under this Code: so that if the survey is not extended to alienated or Inam villages, this definition does not touch the people. Lost by 7 to 4.

* * *

The Honourable Mr. Mandlik next moved that, instead of definition 29 of Section 3, the following should be substituted:—"'Alienated land' means land owned or occupied by private individuals, exempt wholly or partially from the payment of land-revenue, or held under a grant or lease fixing the Government demand in perpetuity." Mr. Mandlik said:—The definition, as drafted, attempts to define merely the word "alienated," which, in the Survey Act of 1865, is defined in reference to alienated villages. An "alienated village" is defined in that Act as follows:—"An alienated village is a village held and managed by private individuals, exempt from payment of land revenue, &c." As defined in the present Code the word "alienated" is applicable to land as well as villages. The idea created at once by this definition is, that if all land that is not alienated comes under the description of "unalienated," the man who has unalienated land has little, or nothing at all, save what he may have under the survey tenure. I have borrowed the definition which I now propose almost bodily from Act I. of 1865, taking out the word "village" and substituting the word "land," to meet the desire to make the definition more extensive, so as to signify all alienated lands as contra-distinguished from those the revenues of which are not alienated. As I explained at the previous meeting of the Council, and also in my minute of dissent from the report of the Select Committee, alienation means, primarily, alienation of the Government revenue, and, therefore, when the term "alienated" is applied to

lands, as it is throughout the Code, it should be so defined as not to create any ambiguity in regard to lands of another kind, to which the tenure of alienated lands does not extend. I submit that the definition I propose to adopt is calculated to keep all that is wished for in the present definition, as drafted, and to make that clear which is at present ambiguous.

The Honourable the Advocate-General :—The objection taken by Mr. Mandlik to definition 29 is similar in principle to his objection regarding the definition of "occupant." and it seems to me that the answer is the same, viz., that the definition does not attempt to define or declare rights. They, as far as the definition is concerned, are entirely beyond the scope of the Bill. The Bill does not pretend to define alienated lands at all. All that is defined is merely the world "alienated," as used for the purposes of the Act alone.

The Honourable Mr. Rogers:—As the Honourable the Advocate-General has stated, there is no intention whatever in the Act to define alienated lands. What is defined is the adjective "alienated," as used in the Act. Nowhere in the Act are proprietary rights defined, and there is no intention to define them. I believe that the Honourable Mr. Mandlik's proposal is founded on the use that was made of the words "owner" and "proprietor" in the Survey Act (I. of 1865): but if that Act is examined closely, it will be seen that there was a reason there for defining what "owners" and "proprietary rights" meant. By the terms used in the present Bill we nowhere deny the existence of owners and proprietary rights, and see no reason why the definition, as the Select Committee have drafted it, should not be allowed to stand.

The Honourable Mr. Mandlik :—No doubt, the definitions by themselves might signify very little, but it is when the term "alienated" is used in conjunction with other words that its signification becomes important. If the expression "alienated lands" were used and defined, as I maintain it ought to be used and defined, it would not have such a mischievous tendency as I say the use of the word "alienated" by itself in the definitions will have, when the word is used, as it is throughout the Code, admittedly, in conjunction with other words. No single word by itself could mean anything; but the signification of this word becomes important in its tendency

to affect rights in different parts of the Code. In regard to the words "owner" and "ownership," referred to by the Honourable Mr. Rogers, there may be no denial of any rights; but a negative Act is much stronger than a positive one, because it pre-supposes a very large sphere of observation. There may be no negation of private rights in this Code; but the use of the term "alienated" in different portions of the Code, derogates from private rights. It is on that account that I submit my amendment for the vote of the Council.

On the vote being taken, the amendment was lost by 7 to 4.

* * *

The next amendment moved by the Honourable Mr. Mandlik was to Section 15, and was to the effect that, instead of the words "holders of alienated villages," which occur in the second clause of that section, the Council should substitute the words "superior holders." Mr. Mandlik said:—The reason why I wish this alteration to be made, is that it was admitted by the honourable member in charge of the Bill, that there might be holders of other than alienated villages, who would have the right of appointing patels and village accountants. What the Council wish to do, I presume, is to save all existing rights; and the words "superior holders" are capable of meaning holders of alienated villages as well as unalienated villages. I submit that the amendment is one which ought to commend itself to the favourable consideration of the Council.

The Honourable Mr. Rogers admitted that there might be others than holders of alienated villages who ought to come within this provision, but he opposed Mr. Mandlik's amendment because he had an amendment of his own to propose, which he thought, would quite meet the objection. He suggested that, instead of adopting the words "superior holders," the section should be allowed to remain as drafted, with the exception that, after the words "holders of alienated villages," which occurred in the 17th and 18th lines of the sections, should be inserted the words "and others,"

The Honourable Mr. Mandlik requested the permission of the Council to alter his amendment, and to adopt the suggestion of the honourable mover. He then moved that the words "or others" should be inserted after the word "villages" in line 18 of the section

and that for the word "village," in line 20, should be substituted the words "alienated or other villages."

The amendment, as altered, was then put to the vote and carried.

The Honourable Mr. Mandlik next moved that Section 84 should stand as follows:—"The provisions of this chapter shall apply to all villages, but not so as to affect the subsisting rights of superior holders." Mr. Mandlik said this was in the same category as the preceding amendment; all he wished was that any subsisting rights should be preserved.

The Honourable Mr. Rogers agreed to the amendment, on condition that for the word "alienated" the words "any such" should be substituted.

The Honourable Mr. Mandlik assented to this alteration, and the amendment, so altered, was adopted.

The Honourable Mr. Mandlik next moved that Section 106 should be omitted. He said:—This section contains a declaration—an enactment of law, which has hitherto had no existence—and although some portions of it may be said to be of the nature of truisms, as declaring that property which does not belong to any private individual belongs to the State, still, as the section stands, it throws upon holders of land the *onus* of proving that the property in their possession legally belongs to them, and if they cannot accept the *onus* of showing by positive proof that the property is their own, it may be declared to be public property. I take leave to say that this is a provision of law which unduly throws on private property-holders the burden of showing that the property is their own. Hitherto, they had only to do that in the case of assessments on Inam property, which is a class of holdings well understood; but in this Code there are a number of questions of appropriations of land, of claims and disputes relative to lands formed by alluvion and diluvion, and of forest rights, which are being legislated upon for the first time in this part of India, and which throw—unduly, as I say—upon the holders of private property the burden of showing what they hold to be their own. No necessity for this law has been shown to the Council, and no cases where the public interest has suffered under the present law have been brought, either before the Council or the Select Com-

mittee. Until such cases are produced, and until the necessity for such a law is clearly proved, no such sweeping general provision ought to be enacted, and I, therefore, propose that Section 106 should be omitted.

The Honourable Mr. Gibbs:—Some additions have been made to this section by the Select Committee, but they were made in a very careful manner, and they really and truly cannot affect the private rights of any parties, because such rights are expressly preserved by another section. That all lands, wherever situated, which are not the property of individuals, are the property of Government, is a simple declaration of the law as it exists everywhere. I know that the Honourable Mr. Mandlik has a general objection to declaratory sections, and considers that they are dangerous to the rights of private individuals; but I do not think this section is liable to be injurious as at present drafted. I may mention that the words "except as otherwise provided," were introduced in order to save some portions of the Municipal Act. If I thought the section injuriously affected private rights, I should be the first to object, but I do not think that is the case; and I am of opinion that the section is a useful one to have in the Code, as a general declaration of the law as it really stands.

The Honourable the Advocate-General said the section merely placed on the holder of property the *onus* of proving that it was his own and really belonged to him, in case of his right being questioned.

The Honourable Mr. Rogers:—The Honourable Mr. Mandlik's objections have been answered already. I am glad to see the honourable gentleman has abandoned his intention of taking the first amendment on his list in connection with the present one, No. 7. I presume the Honourable Mr. Mandlik has arrived at the belief that no member of the Council would desire to introduce any law which would injuriously affect the private right of individuals.

The Honourable Mr. Mandlik said:—The *onus* of proof was changed, and instead of the Collector, who might claim any land as Government property, being obliged to prove the Government title, the holder had to prove his title; until the holder could show that the land was his, it belonged to the State.

The Honourable the Advocate-General said he might mention that the mere possession would give a title in itself, unless it could be shown to be utterly wrong.

The Honourable Mr. Mandlik said it seemed to him that under this section a man would have to show something more than possession.

The amendment was then put to the vote, and lost by 7 to 4.

* * *

The Honourable Mr. Mandlik next proposed that Section 114 should be amended by inserting the word "Government" before the word "land," in the first line. He said he wished this to be done, because, in the case of proprietary lands, the use of the expression "permission to occupy" was a contradiction in terms. There could be no such permission in the case of lands which were held either by assignment, or by right of inheritance, or under any of the proprietary tenures.

The Honourable Mr. Rogers thought no amendment of the section was required, because it was well known that no permission to occupy land that was not Government land was required at all.

The Honourable Mr. Gibbs :—Do I understand the honourable mover to say that, whether the word "Government" is inserted or not, the effect of the section is exactly the same ?

The Honourable Mr. Rogers :—Precisely, because no permission whatever is required to occupy alienated lands.

The Honourable Mr. Mandlik said that was where his objection became patent. There were large classes of holdings which would not come within the definition of alienated lands, but were entirely private property, such as *miras* and other lands of the same description. If it was held, according to the section as drafted, that permission to occupy hereditary property, such as *miras* lands, would be requisite, the amendment he had proposed was very necessary.

The amendment, on being put to the vote, was lost by 7 to 4.

* * *

The Honourable Mr. Mandlik next proposed, in regard to Section 115, either to omit the section as drafted, entirely, or to insert after the word "product," in the 9th line, the words "growing on Government land," and to strike out the words from "wherever" in the 9th line to "property" in line 12.

The Honourable Mr. Rogers objected to this amendment for the same reasons as he had urged in opposition to the amendment Mr. Mandlik had proposed to Section 106. Section 115, as drafted, was a mere declaratory section, stating that, whatever in the shape of "trees, brushwood, jungle, or other natural product" could not be proved to be the property of private individuals, was the property of the Crown. The private rights of individuals were reserved as the section stood.

The Honourable Mr. Mandlik said he had already given most of his reasons for moving this amendment when speaking to Section 106, but he thought there was a particular reason why the *onus* of proof should not be placed, as was proposed to be done by this Section 115. In the case of property of this kind growing in the jungles private proprietors were at a very great disadvantage in proving continuous possession.

The amendment was put to the vote, and was lost by 7 to 4.

* * *

The Honourable Mr. Mandlik next moved that Section 118 should be amended by the insertion, after the word "enacted" in the 7th line, of the words "according to the established principles which govern the assessment of that description of land," and also by the insertion, after the word "wholly" in the same line, of the words "or partially." Mr. Mandlik said the principle was the same whether land was exempt wholly or partially from payment of revenue. The words of the first portion of the amendment he had taken from the Elphinstone Code of 1827, and he thought they ought to be retained.

The Honourable Mr. Gibbs said:—The reason why the words "or partially" had been left out was, that if land was only partially exempt, it was still liable to pay land-revenue to a certain extent, and must be assessed. That alteration had been made throughout

the Code. The reason for omitting the words "according to the established principles, &c.," which occurred in Clause I., Section II of Regulation 17 of 1827, was, that they had given rise to immense difficulty in determining what the established principles which governed the assessment of that particular description of land, might be.

The Honourable Mr. Rogers thought everybody must admit that, since 1827, the Council might be fairly expected to have derived some experience, and to know better how to define on what principles land-revenue should be assessed. Instead of leaving the matter defined, the present Code laid down the established principles on which such revenue should be assessed. As to the insertion of the words "or partially," they would constitute a contradiction in terms.

The Honourable Mr. Mandlik replied that the law of 1827 had stood the test of time, and no cases had been brought before the Select Committee to show any mischief that it had worked; and as regarded the words "or partially," it seemed to him that land which was partially exempt from the payment of land-revenue was, to the extent of that exception, as good Inam land as land which paid nothing at all.

The amendment was put to the vote, and was lost by 7 votes to 4.

* * *

The Honourable Mr. Mandlik next moved that Section 119 should be omitted. He said :—"this is new law, and it is very vague. I submit, that an hereditary landholder can do as he likes with his land, and provisions for levying a different revenue, according to the mode of appropriation, are not at all advisable. When land was first assessed, it would be assessed according to the class in which it was placed by the Survey Department, and that having been done, no further assessment of that land within the currency of the survey settlement has hitherto been contemplated by the law, and it ought not now to be introduced by the law, and it ought not now to be introduced by the Legislature. In regard to appropriation of land for building-sites (anticipating Chapter X.), the Legislature have

already, in 1868, made certain provisions, and I think the Council ought to accept the Act of 1868 as the basis for operation as to assessments of that kind. In order that Section 119 should not clash with Chapter X., I consider that the whole of that section should be omitted. As regards the appropriation of Government lands, any rules which Government may make would be applicable and would not require any particular legislative authority to legalize them; and as regards private lands, I think it is advisable, the Act not being intended for the creation or the extinction of any rights, that there should be no interference whatever.

The Honourable Mr. Rogers:—I do not think that the provisions of the section are vague, but rather that the reverse is the case. These provisions have been introduced in order to show what particular kinds of land should be assessed to land-revenue, and the principle carried out has been partly derived from the old Regulation 17 of 1827, and partly from Act I. of 1865. In Regulation 17 of 1827 it is distinctly laid down that all lands applied to agricultural or other purposes shall be liable to a payment of land-revenue to Government, and the present section is an expansion of that principle. Then, in Act I. of 1865 it is distinctly laid down that if an occupant wished to appropriate the lands in his occupancy to any purposes different from agriculture, he should first obtain the permission of the Collector. It is also laid down in the same Act that "all lands, cultivated or uncultivated, or whether hitherto assessed or not, shall be liable to assessment." Therefore, when the Honourable Mr. Mandlik says the Council would be creating a new law by adopting Section 119, I do not think that is quite correct.

The Honourable Mr. Mandlik:—I do not think the honourable member is quite correct in stating that, according to the law as at present received, all lands to which Section 119, as drafted, relates, are assessable to land-reveuue; because, the uniform rulings of the courts have been, that village sites are not subject to the provisions of Regulation 17 of 1827. This may be bad law, but it is established by a series of decisions extending over a period of fifty years; and I think I am entitled to say the provisions proposed to be introduced are new law. As to appropriations, I have no objection to occupancy lands being appropriated in any way Government may

desire; but, as the section is worded, it is applicable to private lands. Unless that is intended, the section is vague, and if it is intended, I think the law is going too far.

The Honourable Mr. Rogers requested Mr. Mandlik to refer to Act X. of 1876.

The Honourable Mr. Mandlik added that, no doubt, Act X. of 1876 gave a retrospective operation to Regulation 17 of 1827; but if the Government of Bombay, who had the power of interpreting that Regulation, had thought that it related to the levying of land-revenue on village sites, they would have said so. For more than fifty years those who had the power of interpreting the Regulation had interpreted it in a different way. He had brought the matter forward because his attention had been drawn to the fact that the section, as drafted, was in contrast to a series of decisions extending over fifty years.

On the amendment being put to the vote, it was lost by 7 to 4.

* * *

The Honourable Mr. Mandlik next moved that Section 120 should be amended by the insertion, after the word "wholly," in the first line, of the words "or partially," and by the substitution, for the present proviso of the following :—"Provided that in the case of lands the liability of which to payment of land-revenue is subject to special conditions or restrictions, respect shall be had, in the fixing of the assessment and the levy of the revenue, to all rights legally subsisting, according to the nature of the said rights." Mr. Mandlik supported his proposal to insert the words "or partially" by the argument that, in cases where land was partially exempt from payment of land-revenue, there could be no question of assessment; and said he had merely altered the proviso so as to suit that amendment in the body of the section.

The Honourable Mr. Rogers again urged that land which was only partially exempt from the payment of land-revenue, was still, to a certain extent, liable to payment; and must, for the purpose of determining the amount payable, be assessed.

On being put to the vote the amendment was lost by 7 to 4.

* * *

The Honourable Mr. Mandlik next moved that after the word "unoccupied," in line 2 of Section 123A, the word "Government" should be inserted and also that after the word "any," in line 3 of section 123 B, the word "Government" should be inserted. The honourable member said he had already given his reasons for wishing to make the distinction clear between Government lands and private property, in speaking to previous amendments.

The Honourable Mr. Gibbs said he might mention that neither the drafter of the Bill nor the Select Committee had made use of the term "Government lands" throughout the Bill, and the object was a very reasonable one. It would have been necessary to define what Government lands were. The High Court had decided that Government lands were lands which were the property of Government; but the term "Government lands," according to the revenue officers, meant simply lands that were liable to be assessed to the revenues of the State. If the term "Government lands" were used, there would have to be a very careful definition; and he thought it was advisable that it should be avoided, and that the section should remain as drafted.

His Excellency the President:—There would have to be a definition contrary to the decision of the High Court, apparently.

The Honourable Mr. Gibbs:—Yes, I think it would be opening up a tremendous hornet's nest. The honourable gentleman added that Inam land was never supposed to be unoccupied.

The Honourable Mr. Rogers said the section, as worded, could only refer to land liable to assessment.

The Honourable Mr. Mandlik said that Mr. Gibb's explanation strengthened his objections to the section if the revenue officers held that his land, because it was assessed to land revenue, was therefore not his land, but Government land.

The Honourable Mr. Gibbs:—No, no.

His Excellency the President:—The Honourable Mr. Gibbs did not say so.

The Honourable Mr. Mandlik:—I believe the Honourable Mr. Gibbs meant that all land is Government land which is liable to the payment of Government revenue. If that is so, the land of all private proprietors, not exempt from the payment of Government

revenue, is Government land. That is a dilemma into which we should not be led if we distinguished the different classes of lands, as I wish to do by my amendment.

The Honourable Mr. Gibbs said that lands which paid assessment to Government were ordinarily called Government lands in the revenue system. It did not mean that the proprietary rights of any persons were affected in any way.

The Honourable the Advocate-General thought that the portion of the section requiring that the permission of the Mamlatdar or Mahalkari should be obtained, in itself, met Mr. Mandlik's objection, because to suppose that those officers would give permission to occupy private lands would be an absurdity.

On the amendment being put to the vote, it was lost by 7 to 4.

* * *

The Honourable Mr. Mandlik next moved that Section 124 should be amended by inserting the word " Government " before the word " land " in the first line, and by inserting the words " of such lands " after the word "occupant " in the 11th line. He submitted that this section enacted a law which might be sought to be enforced in regard to private lands, as well as what the High Court held, or would hold, to be strictly Government lands; and he maintained that in respect of private lands which were the property of individuals, though the Government had the right to levy an assessment on them, there should be *no* such restriction. In a recent Tanna case, in which it was sought to levy a fine on the owner of a cocoanut oart because he had built some houses on the land in his cocoanut oart, the High Court had held that the man had a right to build on his land, and that Government could only take the assessment. He did not see why such a right should now be infringed upon, and he therefore proposed to describe the lands subject to this section as Government lands.

The Honourable Mr. Gibbs drew attention to the fact that the next amendment on Mr. Mandlik's list proposed to strike out the word " registered " before "occupant " in Section 124B, and to subsitute " said. " Now, a registered occupant was defined, for the purposes of the Act, as the person whose name was entered in the

survey records as liable to pay assessment to Government, and if that section were allowed to remain as it stood, it would be clear that Sections 124*b* and 124, both, applied only to Government lands in that sense.

The Honourable Mr. Rogers said the section (124) had reference only to lands liable to pay Government assessment.

The Honourable Mr. Mandlik said he wished to bring the Code into conformity with the law as it had been interpreted in the recent judgment which he had mentioned. He did not wish to have any novel law enacted ; he merely wished to see a man left free to do as he liked with his own land, though it might be liable to payment of Government revenue. If he could not do so, his land might as well cease to be private property.

His Excellency the President :—You wish to give him a better tenure than he enjoys under the present law.

The Honourable Mr. Mandlik :—I think the present law, as it is interpreted by the High Court, should be retained.

On the amendment being put to the vote, it was lost by 7 to 4.

* * *

The Honourable Mr. Mandlik next moved that Section 126A should be omitted. He said:—This section was not included in the first draft of the Code, when it was circulated for the opinions of the different revenue officers in the Presidency, and it was not in the Code as drafted when submitted to the Select Committee for report. It is a new provision, which we have presented to us from the Land Revenue Act for British Burmah. Now, I submit, that the circumstances of British Burmah and this Presidency are entirely different. Landed property here is held by landholders of various classes and denominations, who have ancient rights which they have inherited from their ancestors, and which have been the subjects of sale and mortgage. People have been in possession of their lands from time immemorial, and by Regulation 5 of 1827, Section 1, they had enjoyed them as proprietors for more than thirty years; and that being the case, the enactment of the new provision, contained in this section, is entirely in subversion of the private rights of the

people. There have been no facts placed before the Council or the Select Committee which warrant the making of this new law ; and I think it would be dangerous to allow such a law a place in an Act which neither creates new rights, nor professes to curtail any existing rights. This is a very dangerous provision, and the Council ought to be extremely careful how they accept it. I know, as a fact, that proprietors of land in this Presidency do at present possess valuable rights. There may be none as regards buried treasure, or gold and silver mines ; but people quarry on their private lands, and use the product as they please ; and, at any rate, there has not been the power given, hitherto, which is here laid down so broadly, in the provision that any Government officer shall be at full liberty to go about anybody's land in search for any kind of minerals, and make geological experiments, " paying to the occupant only compensation for surface damage, as estimated by the Collector." There is nothing to secure private interests, and I think the interests of the British Government demand that such a provision shall not be passed.

His Excellency the President asked if the Honourable Mr. Mandlik considered that the material obtained by quarrying, came within the term mineral products.

The Honourable Mr. Mandlik said he referred to the sinking of mines for taking out different kinds of stone. Sometimes iron was obtained, and that would be prevented by the section. The mineralogical resources of this part of India had not been very minutely inquired into, but in some parts the people had found iron.

The Honourable Mr. Gibbs said that iron was found and worked at Mahableshwur to this day. Mr. Gibbs added, that it would be necessary to strike out the words " and all buried treasure" from the section, because the Government of India were about to pass an Act with regard to treasure-trove throughout the country.

His Excellency the President remarked that he thought the products of quarrying would not include minerals ordinarily.

The Honourable Mr. Mandlik said that if the section were passed as drafted, a man could not do anything he liked on his own land, for extracting minerals, as he could do at present. It was a very sweeping provision also, and there was no definition of " mines and mineral products."

His Excellency the President suggested that such a definition would probably be found in any book of elementary science.

The Honourable Mr. Mandlik said he was told the other day by members of the Council that the word "owner" would have to be defined, if it were used, and there was no better known word than that.

The Honourable Mr. Gibbs said there was one point which occurred to him regarding the section, as drafted. Was it merely prospective? Supposing a man had owned an estate for the last sixty years, would it apply to that?

The Honourable the Advocate-General :—The effect, no doubt, would be to operate against such rights.

The Honourable Mr. Gibbs :—They are saved in the Burmah Act, but are not saved by this section. It seems to me that the section ought to be very carefully considered before it is passed.

The Honourable Mr. Rogers said it might be well to postpone the consideration of the section with regard to Mr. Gibbs' remark. As to what Mr. Mandlik had said, it was not likely that a geological surveyor would go scratching up ground all over the country to find minerals. If iron were found, the smelting of it would be so fearfully expensive a process that there would be no market.

The consideration of the question was then postponed till the next sitting.

The Honourable Mr. Mandlik next proposed to add the following clause to Section 136 :—"Every such hereditary patel or accountant shall be bound to receive, and account to the said superior holder, for all sums paid to, or recovered by him on account of the said superior holder; and on his or their failure to do the same, the superior holder shall be entitled to recover his dues direct from the inferior holders." Mr. Mandlik said misunderstandings might arise between the hereditary patels or accountants and the superior holders, and he wished to add this clause to meet such difficulties.

The Honourable Mr. Rogers proposed to accept the amendment if Mr. Mandlik would consent to insert the words "with the previous

consent of the Collector," after the words " the superior holder," and before the words " shall be entitled," in the latter part of the clause.

The Honourable Mr. Mandlik consented to the alteration, and the amendment was adopted.

The Honourable Mr. Mandlik next proposed to substitute the following for the present Section 178, viz.,—" It shall be lawful for the Governor in Council, whenever such a measure may appear to him expedient, to direct the extension of a survey to any part of the Presidency, with a view to the settlement of the land-revenue, and to the record and preservation of proprietary and other rights connected with the soil ; and such survey shall be called a revenue survey." The honourable gentleman said he had taken this section very nearly bodily from Act I. of 1865. The section drafted in the Bill was too vague, and he thought it was opposed to the present practice. It had always been the custom, whenever contracts in reference to assessments or leases were made, to say that " this contract shall hold good until the next survey of the country."

The Honourable Colonel Anderson saw no objection whatever to the section, as drafted.

The Honourable Mr. Rogers said he did not quite understand the objection. There was a slight variation in the wording of the section and the amendment, in consequence of the word " proprietary' appearing in the latter ; but he thought it was a distinction without much difference.

The Honourable Mr. Mandlik said that whatever was settled about the lands he had referred to, was settled in comparison with the condition of neighbouring lands at the time of the district survey.

The amendment, on being put to the vote, was lost by 7 to 4.

* * * *

The Honourable Mr. Mandlik next moved, in regard to Section 180, that instead of the words " holders of land and other persons interested therein " should be inserted the words " owners or occupants." He said that the words he wished to have used were those which appeared in Act I. of 1865. He did not think that the term ' holders of land and other persons interested therein " could

be said to be very scientific; and it certainly did not go so far as the words "owners or occupants," for which it had been substituted in transferring the section to the present Code. He saw no reason why the old term "owners or occupants" should be so replaced.

The Honourable Mr. Rogers said it appeared to him that the definition of the word "holder" quite met the objections urged by Mr. Mandlik, and that there was not the slightest necessity for any amendment.

On the amendment being put to the vote, it was lost by 7 to 4.

* * *

The Honourable Mr. Mandlik next moved that instead of the words "not wholly exempt," in lines 7 and 8 of Section 181, there should be substituted the words "neither wholly nor partially exempt." He said that where land was exempt, even partially, there could be no discretion exercised on the part of the revenue officers in fixing the assessment, as it would be already determined.

The Honourable Mr. Gibbs supposed that if land was exempt to the extent of, say, half the assessment, it would still have to be assessed.

The Honourable Mr. Rogers :—The assessment would be fixed on the whole, and then half would be deducted.

The Honourable Mr. Gibbs:—The Survey officers would still have to assess and value such land, and then deduct whatever the amount of exemption might be.

The Honourable Mr. Rogers :—Yes.

The Honourable Colonel Anderson suggested the consideration of the section should be postponed. As drafted, it would clearly preclude the assessment of all lands that were wholly exempt, and though they might be exempt from payment, it was necessary to assess them.

The quastion was accordingly postponed till the next sitting.

The Honourable Mr. Mandlik next moved that clause (b) and (c) of Section 188 should be struck out, and that the section should stand

thus :—"Nothing in the last preceding section shall be held to prevent a revised assessment being fixed with reference to any improvement effected at the cost of Government." The Honourable gentleman said :—The clauses I propose to strike out are "(*b*), with reference to the value of any natural advantage, when the improvement effected from private capital and resources consists only in having created the means of utilizing such advantage, or (*c*), with reference to any improvement which is the result only of the ordinary operations of husbandry." I submit that these clauses would place capitalists at a great disadvantage, because, if a man spent private capital and resources, he can only do so in order to utilize some natural agency, and the amount of the improvement due to each would be incommensurable. I do not know what would be the survey gauge by which the difference could be estimated, and I would prefer to see private capitalists encouraged to utilize every natural agency possible, in order that the operations of agriculture may be promoted. As to improvement arising from the ordinary operations of husbandry, it is only fair that the cultivator should reap the advantage of them; and if the Government bring about any improvement by making canals, or by some other agency, it is proper that such improvement should pay its quota to the public revenue.

The Honourable Colonel Anderson :—The first part of the section, viz., that which Mr. Mandlik proposes to retain, refers to improvements effected solely at the cost of Government, as in the case of irrigation works, made roads, &c. Then, as an instance of improvement effected by private capital and resources only by utilizing natural advantages :—suppose a stream runs beside a field : that stream is public property ; and if the ryot cultivating the field dams up the stream, and turns the water into his field by the custom of the country from all time, the improvement in the field effected by such means is subject to assessment. As to the question of improvements effected by the ordinary operations of industry, such operation will, in time—insensibly, I may say—bring about a better quality of soil, because sub-soil which would otherwise become indurated, benefits by the operations which enable the surface-soil to hold water. Direct improvements, caused by digging wells,

&c., at the expenses of the cultivator, are held free from assessment.

The Honourable Mr. Bengali asked whether the assessments could be revised in respect of the improvements referred to in the section, within the period of thirty years from the last survey.

The Honourable Colonel Anderson:—No, certainly not. They can be revised at the end of the thirty years.

The Honourable Mr. Rogers said he had nothing to add to what Colonel Anderson had stated, except that he entirely agreed with him.

The Honourable Mr. Mandlik:—The argument as to the ordinary operations of industry would apply only to cases where a man took to the cultivation of land which had previously lain follow; and I submit, that the use of Government water would come within the section as I propose that it should stand; as in that case, the improvement would be effected—if not directly at the cost of Government, directly from the property of Government. My argument refers to cases in which a man might spend private capital in bunding his own fields and in turning water. Besides, difficulties might arise by a stream overflowing during the rains, and bringing from the mountains and other fields fresh soil, which might be deposited and tend to the improvement of the land. I should not object to the section were it differently worded; but as it is at present drafted, all kinds of difficult questions would be raised, which ought to be left free. Capital ought to be attracted as much as possible towards the cultivation of land, and I think it would be advisable to stop at clause (*a*) and leave out (*b*) and (*c*).

The Honourable Mr. Gibbs said clause (*c*) was meant chiefly to apply to poor land which was not assessed at first, but which afterwards came to be assessed when improved by cultivation.

On the amendment being put to the vote, it was lost by 8 to 3.

* * *

The Honourable Mr. Mandlik next moved that the following clause should be added to Section 199, viz.:—"The determination of the village boundaries thus made shall be final, as regards the

rights of holders of the two villages." The honourable gentleman said: I wished to save the rights of the persons in actual occupation of the land. This amendment is part and parcel of that which I have given notice of in regard to Section 204A. All that is contemplated by the Act of 1865 and by the Regulation of 1827 is the determination of village boundaries, and the holders of fields are left undisturbed—except so far as it is decided whether they should pay rent to one superior holder or to another. All I wish is, that matters should be left as they at present stand.

The Honourable Mr. Gibbs suggested that Mr. Mandlik's amendments 28, 29 (*b*), and 30, might all be taken together.

The Honourable Mr. Mandlik:—I have no objection, as they merely involve the same point in regard to different sections, viz. Sections 199, 201, and 204A. To Section 201, I wish the following proviso to be added:—"Provided that the determination of any boundary under this section shall not debar any one claiming any right in the land from any legal remedy he would otherwise have for dispossession;" and I wish to have Section 204A omitted altogether. As I stated at the last sitting of the Council, when these sections were discussed in 1865, the proviso I now propose to add to Section 204A was unanimously adopted; it being distinctly stated by Sir Barrow Ellis, and other members of the Council at that time, that it was not intended finally to determine the rights to fields by the proceedings of the survey officers. If the other amendments should meet with the approbation of the Council, it will naturally follow that Section 204 will be omitted.

The Honourable the Advocate-General stated that if the Council accepted Mr. Mandlik's amendments, they would be running directly counter to the Government of India's Bombay Revenue Jurisdiction Act, Section 4.

The Honourable Colonel Anderson:—If any holder of a field feels himself injured by the fixing of his boundaries, he has the option of a series of appeals. He can go to the superior Survey Officers, the Collector, the Revenue Commissioner, and the Government. And every pains are taken to get hold of the real boundaries. It is just as easy for the survey officers to measure the real bound-

aries as false ones; and the appeals against the boundaries as finally arranged are really *nil*. I had never heard of a case during ten years' work.

The Honourable Mr. Mandlik considered that the Bombay Revenue Jurisdiction Act referred to the fixing of boundaries as boundaries, and not as determining private rights.

The Honourable Mr. Rogers drew Mr. Mandlik's attention to Section 5 of the Bombay Revenue Jurisdiction Act, to the effect that nothing in Section 4, clause (*g*) shall be held to prevent the civil courts from entertaining suits, being other than suits, against Government.

The Honourable Mr. Gibbs said the question was—Whether the Council had power to discuss the amendment? If the point had been decided by the Imperial Legislature, they could not interfere.

The Honourable Mr. Rogay asked if the Bombay Revenue Jurisdiction Act was not under suspension.

The Honourable Mr. Gibbs :—No, it is law now.

The Honourable Mr. Rogay :—Has not the Secretary of State vetoed or suspended it?

The Honourable Mr. Gibbs :—He has not vetoed it, and he has no power to suspend it: it is in operation at the present time.

The Honourable Colonel Anderson said he should not have the slightest objection to the old law if there was some limit as to time.

The Honourable Mr. Mandlik said he should not object to that.

The Honourable Mr. Rogers :—There can be little doubt as to the intention of the Imperial Government in framing the Bombay Revenue Jurisdiction Act, because the very words the Honourable Mr. Mandlik now wishes to re-enact, are expressly repealed in the schedule to that Act. The proviso to Section 14 of Act I. of 1862 is specially repealed.

The Honourable the Advocate-General said that undoubtedly, in his opinion, as the amendment stood, it would clash with clause (*g*) of Section 4 of the Bombay Revenue Jurisdiction Act.

The Honourable Mr. Mandlik said as the proviso had been specially omitted from the Bombay Revenue Jurisdiction Act, he would not press his amendments as regarded Section 201, but he still pressed the amendments to Sections 199 and 204A.

The amendment referring to Section 201 was then withdrawn, and the amendments to Sections 199 and 204A were put to the vote, and lost by 7 to 4.

* * * *

The Honourable Mr. Mandlik said he had given notice of his intention to move another amendment to Section 201, to the effect that instead of the words "holder or person in occupation," in lines 6 and 7, the words "owner or occupant" should be inserted.

The Honourable Mr. Rogers objected for the same reasons that he had advanced in opposition to amendments of precisely the same character already decided upon.

On being put to the vote the amendment was lost by 7 to 4.

* * * *

The Honourable Mr. Mandlik's amendments were proceeded with. The Honourable gentleman said:—Amendments numbered 32, 33, 34, 35, and 36, on the notice-paper, all relate to Chapter X., and it will save time if the Council will permit me to move them together. When this chapter was first introduced into the Bill, the Honourable Mr. Chapman, who then had charge of it, proposed to adopt a limit of five years as the length of possession to entitle the holder of land to exemption from the payment of land revenue. Mr. Chapman said the only new part of the chapter was contained in Sections 162 to 179 (as they were then numbered), which related to claims to uncultivated land in villages, towns, and cities; and it would be observed that five years' occupation from the passing of the Bill would give a prescriptive title; and added, that he did not imagine any objection could be taken to that on the score of liberality. I have inquired into this subject since the Bill came before the Select Committee, and I find that the people, at least the *Nurwadars* and *Bhagdars*, have been reported by Government officers to be proprietors of their sites, as much as other proprietors

of private lands in other parts of the country. The contention that Government has no connection with the land of the country, which I have advocated, is strengthened by a variety of testimony, to which I alluded at a previous sitting of the Council, when this point was discussed. The only material of a somewhat contrary nature that was placed before the Select Committee was in the shape of reports from some of the Collectors in Guzerat. When the whole of this subject was considered, and well considered, by the Council in 1868, they came to the unanimous conclusion, on the recommendation of the Honourable Mr. Ellis, that five years' possession was to be the limit to entitle a man to exemption. No strong evidence to the contrary has yet come before us, and I would request the Council, in a matter of this kind, if it were necessary, to stretch a point in favour of rights of long duration, and not to disturb what has never hitherto been disturbed, at least during the currency of the British *raj*. I may observe that the honourable member in charge of the Bill had himself at one time come to a different conclusion in regard to the connection of Government with land in this part of the country. For, in one of his earlier reports he, the Honourable Mr. Rogers, says :—"It is an obvious fact that the property of the State, as long as it exists in the shape of a tax upon rent, is a mere anxiety upon capital invested, which can only be made reproductive at all when there is a surplus of income over expenditure. The State is not in the position of the landlord who can improve his lands, and thus increase his rent, and any attempt to increase the amount of the State tax upon rent, in consequence of the improvements carried out with its cultivator's capital, must, of course, tend to discourage improvement, and thus re-act to its own disadvantage, in checking the general increase of wealth, and the consequent ability of its subjects to bear taxation." The honourable gentleman then formally moved the following amendments, viz :—'That Section 208-A be omitted."

"That Section 208-B, stand as follows :—'In towns and cities to which Bombay Act I. of 1865 or IV. of 1868 has been applied, the existing exemption of lands which have not hitherto been used for purposes of agriculture only from payment of land-revenue shall be continued : 1st.—If such lands are situated in any town or city

where there has been in former years a survey, which Government recognize for the purpose of this section, and are shown in the maps or other records of such survey as being held wholly or partially exempt from the payment of land-revenue ; 2nd.—If such lands have been held wholly or partially exempt from the payment of land-revenue for a period of not less than five years before the application of Bombay Act I. of 1865 or IV. of 1868 to such town or city ; 3rd.—If such lands, for whatever period held, have been held wholly or partially exempt from payment of land-revenue under a deed of grant or of confirmation issued by an officer whom Government recognize as having been competent to issue such deed ;"

"That Section 208-C stand as follows :—In villages, towns, and cities to which Bombay Act I. of 1865 or Bombay Act IV. of 1868 has not been applied, the existing exemption of such lands from payment of land-revenue shall be continued if they have been held wholly or partially exempt from the payment of land-revenue for a period of not less than five years before the passing of this Act ;"

"That in Section 208-D, line 5, instead of the word 'summary' be inserted the word 'formal,' and that the remaining words of the section, after the word 'inquiry' in the same line, be omitted ;"

"That Section 208-E be omitted."

The Honourable Mr. Rogay :—I beg, Your Excellency, to support the amendments proposed by my friend, the Honourable Mr. Mandlik. These amendments involve the question of village sites, which Mr. Mandlik has so forcibly shown, and I believe to the satisfaction of the Council, to be private property. It is evident that in 1861 the arguments now urged by the Honourable Rao Saheb were considered to be good ones, and a limit of five years was then liberally fixed as the term of possession to obtain prescriptive rights. I think that it has never been intended by the Survey Act to settle the titles of private property, but that the Act is only intended to map out the country, to facilitate the collection of the revenue. Having the fact of the passing of the Act of 1868 and the discussions that took place in the Council at that time before our eyes, I do not think it would be right to make either retrospective or pro-

spective the law, as enacted in this Chapter X., as at present drafted. I think retrospective laws never ought to be passed, unless there are very grave special reasons. They have been condemned by Legislatures; and Lord Macaulay, commenting on the laws of the 18th century, has written that "retrospective laws are very mischievous and a curse to the people." I, therefore, submit that it is against the principle of revenue jurisprudence to pass a retrospective law. I have no doubt that any law, whether retrospective or prospective if it is a Government measure, will be passed through this Council, as the Council is composed chiefly of members of the Executive Government who support a Government measure, whether they like it or not, because they are bound to support it. The divisions on the amendments proposed at the sitting yesterday, showed that the Council were voting as on a party-question, the Europeann members voting on one side, and the Natives on the other. The latter are in a minority, and may anticipate defeat always; and knowing that it is their duty to bring to the notice of His Excellency the President and the other honourable members of the Council what their opinions are, because, directly and indirectly, they and their poor countrymen will be the sufferers, if injurious laws are passed through this Council.

The Honourable Mr. Rogers:—I do not now propose to reply to the arguments urged against this chapter. I have no doubt that a great many, if not all, could be very easily refuted; but at present I merely propose that the sections, as drafted, should be passed provisionally, in order that they may go before the country, and the officials throughout the Presidency, and that a full discussion may be raised. At present the Council's hands are tied.

The Honourable Mr. Gibbs said:—The Legislative Department referred a matter to the Government of India recently, regarding the Mamlatdars' Courts Bill, and an answer was returned, stating that it was irregular, and that the reference should have been made by the Executive Government.

The Honourable Mr. Rogay asked if the Honourable member preferred to leave this matter in the hands of the Executive Government.

The Honourable Mr. Gibbs :—At present we are bound by the orders of the Government of India.

The Honourable Mr. Rogay thought that to postpone the consideration of this matter, or to pass the sections provisionally, was not so desirable a course as to decide the point at once.

The Honourable Mr. Bengali :—I am of the same opinion. The honourable mover of the Bill gave the Council what, I think, was his chief reason why the chapter has been framed as it stands, when he said the house-sites in villages went along with the land to be cultivated. That may be right in the case of some villages, but I cannot imagine the whole of India being without villages, and the people applying to the Government for land to settle upon. The tillers of the soil must have lived in the country, and have been possessed of village-sites long before any settled government had existed. The enactment of law proposed in this 10th chapter is a complete innovation. Whoever started the idea of calling all the village-sites Government land, and of getting revenue out of them at some future date, probably considered it was a very happy thought, but I am not of that opinion. The effect would be to take away from the people their *gharband*, as the Honourable Rao Saheb said at a former meeting of the Council, and that would be regarded as rather contrary to the friendly policy of the Government entertained towards the poorer classes of this country.

The Honourable Mr. Mandlik said that if the amendments he had proposed were passed provisionally, he should have no objection to the course suggested by Mr. Rogers being followed. All that he proposed was in the same spirit in which the original Act of 1868 was passed, and, speaking for himself, he did not see that any evidence had been produced on which the Government of India could now adopt a different policy.

The Honourable Colonel Anderson :—It would be a very conclusive point to show that there is no proprietary right in village sites. There are constantly to be met with throughout the country what are called *be chiragh* villages that have been deserted, some recently, and some formerly, either because the site has proved unhealthy, or on account of decrease of population, and the amalgamation of two villages, or for some other reason ; and no one ever heard of a claim

being made to an atom of land in a *be chiragh* village. If there is any claim to such land extending beyond the mere use of it while occupied as house-sites, such claims must have been made. And, besides, it by no means follows that because there may be a proprietary right, the property is free from taxation. In Native States a house-tax—a tax on the *gharband*—is a universal impost.

The Honourable Mr. Bengali :—In villages ?

The Honourable Colonel Anderson :—Yes, in villages. In Mysore it is a very considerable item of revenue ; it exists in Kolhapur and Jamkhandi ; and I believe that it is the custom throughout every one of the Southern Maratha States. I believe it has disappeared from Bombay in consequence of the policy of 1844 ; but, according to the custom of the country everywhere, it is the commonest tax of all the taxes that are levied. I may mention another point wi h reference to a proprietary right to a particular house site. If a man is allowed to squat in a village, and his house falls down, he will, no doubt, be allowed to rebuild it, but if he should not choose to rebuild it, he cannot put in a claim to the ground on which it stood. That is the case in villages, though, of course, circumstances may be different in large cities. Nothing like proprietary rights in village house sites has existed in former times, and any attempt to put it forward now is an innovation.

The Honorable Mr. Mandlik :—I do not desire to say anything about Native States ; analogies of that kind might be drawn both ways. In a matter where there is so little in common between British subjects and the subjects of the Native States, I think I may be excused if I decline to enter into that portion of the arguments adduced by the Honourable Colonel Anderson. In reference to the honourable member's statements about village-sites, however, I beg to refer the Council to the conclusive replies as to *mirasdars*, and their holdings and lands, which were collected by the Honourable Mountstuart Elphinstone, and published in one of the four volumes of selections from the India House, and to the documentary evidence collected by one of the Collectors of Poona, Captain Henry Dundas Robertson. Besides, to go no farther than recent reports, I have in my hand Mr. W. G. Pedder's report on the Kaira Collectorate, in which he says :—" In these districts the usual form of the

village community was the second or democratic one. Each village was originally founded by a family or association of families of the cultivating castes—Rajpoots, Koonbees, Boras, or Bhatteas, all apparently belonging to kindred tribes. These people, with their servants and 'balis,' fixed the village-site, dug the well and tank, planted the groves, built the village temple, and thus exercised rights of possession. They then induced artizans to settle in their village who were the servants of the community, and to whom they gave houses, bits of land rent-free, grain-cesses, &c.; other cultivators, mostly of inferior castes, were in process of time attracted to the village, and the proprietary body permitted them to cultivate such land as they did not want themselves, but gave them no proprietary rights;" and further on in the same report Mr. Pedder says:—"Most revenue officers, European and Native, seem to believe that nurwadars and bhagdars are the descendants of some one person, who, at some remote period, farmed the Government revenues of the village; that this person's descendants divided the lease among them; that they are not necessarily owners of the land, but merely receive, in return for collecting it from the cultivators, a certain portion of the revenue. Even the late settlement officer, drawing (I know not why, for none such exists,) a distinction between bhagdari and nurwa villages, seems to speak of bhagdars as hereditary lease-holders, 'usually the patels'. Nothing can be more unfounded than this belief. I have shown, I hope, that the nurwa and bhagdars are merely the old proprietary cultivators, and the system only a mode of sharing the Government demands. They never received, or claimed to receive, any portion of what in native revenue language is called the 'raj-bhag' of the produce, but only the 'kheroo-bhag.' If this point seems doubtful, let me refer to paragraph 17, where I have shown that, at the commencement of our rule in Broach, the bhagdars paid the revenue by 'kultur buttai.'"

The argument regarding *be chiragh* sites, branches into an entirely different subject. Wherever there is no proprietor to own any particular land, no doubt the sovereign is the proprietor; and I have no objection to the disposal of such sites being regulated by Government in any manner they please.

The amendments, on being put to the vote collectively, were loss by 7 to 4.

* * * *

The Honourable Mr. Mandlik had given notice of his intention to move four amendments to Section 212, 230, 237-G. and 283, all relating to the insertion of the word "Government" and the omission of the word "alienated," as describing certain lands to be affected by those sections. The honourable gentleman now said that, after the divisions that had taken place already, he did not wish to press these amendments, and they were accordingly withdrawn.

The Honourable Mr. Mandlik next moved, collectively, four amendments to Sections 107, 118-A., 123-D. and relating to the question of the assessment of lands formed by alluvion or diluvion. The amendments were: to Section 107—"(*a*) Omit the following clause in lines 10 and 11 of paragraph 1 of this section, viz.—'If it attaches itself to alienated land.'

(*b*) Omit the following from lines 20 and 21 of paragraph 2:—'And if the portion on either side adjoin alienated land.'

(*c*) Substitute the following for paragraph 3:—

"But the last two rules shall not apply to any new land which may attach itself to an alienated holding, if the area of such alienated holding has been at any time fixed, and recorded in any Sanad or granted to the holder by competent authority.'

(*d*) Omit paragraphs 4 and 5 of this section.

(*e*) Omit paragraph 7 of this section."

To Section 118-A.—"That the whole section be omitted;"

To Section 123-D.—"That the whole section be omitted;"

And to Section 123-E.—"That the whole section be omitted."

The Honourable Mr. Mandlik said:—These sections, as drafted, make a distinction between holdings that are exempt from payment of land revenue and holdings that are not exempt, and I fail to see why one class of holdings should be treated in respect of land formed by alluvion or diluvion more favourably than another. Clause 1 of Section 107 says that "land formed on the shore of the sea or on a bank of a river or creek by the gradual accretion of particles, or by the water gradually receding, shall, if it attaches itself to alienated land, be deemed to be an increment to the holding to which it attaches

itself, and shall vest in the holder of the said land, subject to the same conditions and restrictions in respect of his tenure thereof as are applicable to his original estate:" whereas, according to Section 123-D., "When it appears to the Collector that the occupancy of land which has been formed by alluvion or by dereliction of a river or of the sea, and which vests under Section 107 in Government may with due regard to the interests of the public revenue, be disposed of in perpetuity, he shall, in the case of land, such as is described in Clause 4 of Section 107, offer the prior right of occupancy to the holder of the alienated land to which the said land is attached, or which it adjoins and in the case of any other land shall offer such right to the occupant, if any, of the unalienated land to which the said land is attached, or which it adjoins." Then come rules as to how much the holder is to get for nothing, and how much he is to pay for. The Council will observe that, if a man loses all his land, he does not get anything—he cannot expect to be re-imbursed, because he has sustained a loss by the operation of natural causes. If there is an accession to his land by such causes, no doubt the State is entitled to levy an additional tax; but, I submit, that if an alienated landholder is allowed an advantage, the landholder who pays revenue to Government ought to have the same advantage. Moreover, a man ought not to be expected to pay on such an addition to his land if it amounts to more than one-fourth, or one-tenth, or some such proportion. If islands are thrown up in a river or in the sea they belong to Government, and with such cases I do not wish to interfere, but they are a different class of property entirely to land formed on the banks of rivers and on the sea-shore, &c. What I wish to urge is, that the holders of all lands, whether alienated or not, should be treated in the same way as regards accessions to their lands that are due to the operation of natural causes.

The Honourable Mr. Rogay:—I beg to support my honourable friend's proposition and I am of opinion that the arguments he has advanced are so conclusive that they cannot be denied. I cannot understand the reason of the framers of the Bill for making a distinction in this respect between alienated and unalienated lands. At Mahim, some thousands of square yards of land have been washed away, and the people had to suffer, and if they should get any fresh

lands by natural causes, I think they ought to reap the advantage of the increment, as they have had to sustain the losses by encroachments. I admit, that as the area of the ground increases, the State has a right to levy increased dues; but I do not see any reason for making a distinction between alienated and unalienated lands. I cannot vote for the sections, as drafted, and I have much pleasure in supporting Mr. Mandlik's amendments.

The Honourable the Advocate-General said:—It appears to me that the distinction which has been made in the Bill between the holders of alienated and unalienated lands is perfectly just. An alienated landholder holds his land exempt from the payment of land revenue, and the result is that, except as regards the surveyed portion, all access of land that he may obtain by alluvion is also exempt; but, on the other hand, in the case of a holder who holds his land subject to assessment, the land which may become attached by alluvion is also subject to assessment. He holds the accrued land on the same terms upon which he holds his other land, and by Section 123 it is provided that he shall have the option of taking the accrued land subject to assessment, or of refusing to take it. The result, as far as I can see, is that, in the case of land attaching by alluvion to alienated holdings, it is placed on the same footing as the original holding, viz., subject to assessment—a prior option being given to the holder either to take it on such terms or to refuse it.

His Excellency the President asked if the washing away of land at Mahim, alluded to by the Honourable Mr. Rogay, had occurred within the last thirty years.

The Honourable Mr. Rogay said the land was being washed away still, every year.

The Honourable Mr. Bengali said that during the last four or five years a great deal had been washed away.

The Honourable Mr. Rogers:—I oppose the amendments on the same ground as that stated by the Honourable the Advocate General, and I also wish to explain exactly how the sections, drafted, will work. Alienated land is defined, for the purposes of this Act, to mean land the right of levying revenue on which has been transferred from Government to other powers; and in the case of un-

lands, any increment upto one-fourth of the original holding will be handed over to the alienated holder ; but in the case of unalienated lands, any increment can only be enjoyed by the person in possession of the original land, provided that assessment be paid to Government. I think the amendments that have been proposed would have the effect of giving over the new land to the holder of Government land, on the same terms that the original land may be held, but that would scarcely be fair. It might be that the original land would be of a poor quality, and assessed accordingly, and that the new land would be of a much richer and better character, and of far greater value ; and it is, therefore, laid down that the assessment shall be revised, and the new land assessed according to its natural capabilities.

The Honourable Mr. Mandlik contended that the new land should go to the holder of the original land to which it became attached, whether alienated or unalienated, on the same terms upon which the original land was held.

The amendments were then put to the vote, and lost by 7 to 4.

* * *

The Honourable Mr. Mandlik next moved that Section 126 A should be omitted. He said he had already said all he wished to say regarding this section, except to call attention to the fact that even the Burmah Act, from which the section was taken, provided for twenty years' holding constituting an exemption from the operation of this law. He thought it was a very objectionable law, and trusted the Council would not incorporate it in the Code.

The Honourable Mr. Rogers proposed to meet Mr. Mandlik's objections by altering the section to read as follows :—"The right of Government to mines and mineral products in all unalienated land is, and is hereby declared to be, expressly reserved, provided that nothing in this section shall be deemed to affect any subsisting rights of any occupant of such land in respect to such mines or mineral products."

The Honourable Mr. Mandlik declined to accept the alteration or to withdraw his amendment. He said the honourable mover of the Bill declared a right which the Government had never previously

claimed, and he did not think there was any evidence before the Council to warrant the insertion of such a clause.

The Honourable Colonel Anderson said :—The section, as now proposed by the honourable mover, was little more than declaratory. There would be no encroachment whatever on existing rights, where rights could be shown to exist.

The Honourable Mr. Mandlik said :—The new section, as now proposed by the Honourable Mr. Rogers, was somewhat more liberal than the original sweeping clause, but the objections he had already urged still applied. He thought that any such innovation in the existing law was to be deprecated. He had never opposed anything which would assist the realization of the revenue, and any administrative change that was necessary for the perfection of measures for such realization, he would be the first to support; but he thought that the great thing which ought always to be very carefully guarded against in this country, was the danger of too frequent changes and alterations of the existing law.

The amendment moved by Mr. Mandlik, that Section 206-A be omitted, was then put to the vote, and was lost by six to five.

* * * *

The Honourable Mr. Mandlik next moved that Clause 2 of Section 134 should be omitted. The honourable gentleman said :—This is what may be called the perpetual tenancy clause, and it goes farther than any legislation of the kind has yet done. Even where occupancy rights have been granted *de novo* by the Legislature, it has been distinctly held that such rights are non-transferable. Occupancy rights under (Bengal) Act X. of 1859 have been held to be non-transferable. Another point is, that there is no definition of what is meant by "antiquity." It is well known in England what "time immemorial" means, but there is no such limitation here, and it would be difficult to define what antiquity might mean. I have already stated, more than once, the reasons why I object to this clause. There was a case decided not very long ago, from Poona, in which a piece of ground belonging to a temple had happened to be held by one family for more than two generations, and the tenants happened to quarrel with the committee of the temple, or the mana-

ger of the committee, and refused to pay certain dues which were demanded for and of right belonged to the temple. The *sanad* was distinct, showing that the land had been granted to the temple; but taking advantage of the uniformity of the rate of rent for so long a period, the tenants argued that they had a perpetual tenancy. However, although uniformity of payment was proved, extending beyond a period of sixty years, it was held that, inasmuch as the land belonged to the temple, the *onus* was on the tenants to prove that they had a perpetual tenancy. Decisions in similar cases have all along run in that direction; but, according to the present section, there will be considerable difficulty, and probably the Courts will have to decide the other way. I see no reason why the present law should be altered.

In answer to a question from His Excellency the President, Mr Mandlik said that in the case he had quoted the tenants wanted to set up almost as owners of the land, claiming that the temple had a right only to the collection of the Government revenue.

The Honourable Mr. Bengali:—I have supported Mr. Mandlik in almost all his amendments, but I cannot vote with him in this instance. I am afraid Mr. Mandlik is somewhat inconsistent in his arguments, after stating, repeatedly, that Government in this country have only a right to a share in the produce of the land and not to the land itself, and in now bringing forward his present amendment. It appears to me that the object of the clause which Mr. Mandlik proposes should be omitted from the Bill, is to prevent *Inamdars* and others to whom land has been given by native sovereigns, or by the English Government, from ousting their tenants—tenants who may have been holders of the land for centuries—and sending them away whenever they may think fit. I do not see why these landholders should have a greater right over their tenants than the Government themselves possess. I consider the clause to be a safeguard for the tenants, whom influential landlords may otherwise turn out as they please, and I think it would be a great pity if it were omitted.

The Honourable Colonel Anderson:—The Honourable Mr. Bengali appears to be entirely in favour of the protection of the cultivating class against what may be called the landlord class, for the

protection of the ryots against the *Inamdars*. As a general rule, *Inam* grants are not of an extremely ancient date, and they always contain a clause which may be interpreted—"with the reservation of all existing rights." The families of the ryots holding land in these villages have, in many cases, been for generations there, and the Government, in granting an *Inam*, cannot make over their rights as tenants to the *Inamdars*, their tenure is perfectly independent, and, by the custom of the country, so long as they continue to pay their revenue dues, the right of collecting which alone the Government make over to the *Inamdars*, the *Inamdars* have no right to interfere. They gradually, however, came to do so, and matters reached a culminating point about 1865, when the *Inamdars* began to press their ryots for payment of higher assessments. The profits of the agricultural classes for two or three years, especially in the cotton-growing districts, had been enormous; they received gold where formerly they would have been glad to receive silver, or even copper; and the *Inamdars* began running up their rents to an enormous figure. In one particular case the Collector of Dharwar asked me to be present at an interview between himself and a large *Inamdar* and his ryots. This *Inamdar* had been pressing the ryots beyond all bearing, and the object of the interview was that the Collector might reason with him, and get him to do something fair and moderate. The *Inamdar* and the ryots appeared, and the latter said they were willing to pay so much, the figure being a great deal more than had been paid customarily, but still not absolutely unreasonable, according to the enormously depreciated value of money at that time. The *Inamdar*, however, said he would not take it, but he would put them down for Rs. 10 per acre that year, and if that was paid, for Rs. 100 per acre the next year; he did not want the money at all, he wanted the land, and was determined to get it. The ryots in this case had a tenure very probably far antecedent to the *Inamdar's* grant. The *Inamdars* did, in a large number of cases, succeed in taking the land away from the ryots. One case was tried in which an *Inamdar* sued a ryot for excessive assessment, and the ryot said he was willing to pay the proper sum according to his tenure, but the *Inamdar* refused to take it, and the court supported the *Inamdar*. The judge held that the law was imperfect, and wished to bring it to a certainty. There can be no doubt whatever that, in the

existing state of the law, the cultivating class—the mass of the people—are under great hardship in *Inam* villages. They are required to pay very much more than the Government ryots have to pay; I know that from experience in having to settle *Inam* villages. The revenue which has to be given to the *Inamdars* in order to induce them to give their ryots a secure tenure, is very considerably higher than is exacted under the Government revenue assessments. What the ryots require is some legislative security against being under subjection to the landlord class, who are not always the most scrupulous people imaginable.

The Honourable the Advocate-General drew attention to the saving clause, which, he said, ran as follows :—" Nothing contained in this section shall affect the right of the land-lord (if he has the same either by virtue of agreement, usage or otherwise), to enhance the rent payable, or services renderable by the tenant, or to evict the tenant, for non-payment of the rent or non-rendition of the services, either respectively, originally fixed, or duly enhanced as aforesaid. The honourable gentleman said he considered that that saving clause perfectly preserved the landlord's right, if he had the right to increase his rent, and if the tenant would not pay, he could turn him out. This clause would meet the case of the temple to which Mr. Mandlik had referred. The intention of the section was to preserve rights in cases where landed estates had been held by the present or former Government; and grants had been made of them to *Inamdars* and others, because the Government could only make such grants, subject to the preservation of existing rights of the ryots, so long as they continued to pay their rents.

The Honourable Mr. Rogay :—I think it is not right to place Government and private landlords in the same category, and to argue, because Mr. Mandlik holds the Government should not transgress rights that had existed from time immemorial, that therefore he ought also to hold, that a landlord has no right to turn out his tenant, because he seems to have an ancient right. I consider that the clause objected to by Mr. Mandlik will affect the rights of land-owners, who have a perfect right to turn out any tenant, whether an ancient or a new one, and whether he has any written lease or not, if he does not pay his rent. Colonel Anderson says that the proprietors of alienated villages are

people who exact excessive payments from their tenants, and that the object of the section is to protect the tenants against such exactions. If that argument is admitted, I may say the Government are not consistent. The Government have in many cases levied assessments which they had no right to levy; and a Bombay Revenue Jurisdiction Act has been passed against the opposition of all the people o Bombay and all the Judges of the High Court. If antiquity is the only title to justify a tenant feeling that he is not liable to have his rent enhanced, the same argument should apply to the *Inamdars*, who have ancient rights, and from whom former Governments never took any assessment, but from whom Government now take one-eighth of their Inams. If honourable members speak of consistency, I do not think either the Council or the Government have ever been consistent. My honourable and learned friend, Mr. Mandlik, has been perfectly consistent. A tenant should be turned out if he does not suit the wishes of his landlord, and does not pay his rent; because the landlord invests his money with the object of getting a return from it, and if one tenant does not pay him, he has a right to let his land to another, who will. I think the section, as drafted, will take away the rights of the people under the plea of protecting the poor ryots, and I have much pleasure in supporting the amendment.

The Honourable Mr. Rogers :—If the Council will consider the section attentively, they will see that there is no intention whatever to interfere with any rights, but merely to protect the status of ancient tenants. I am sorry to see the Honourable Mr. Mandlik placing himself in a position which, I think, is decidedly in favour of the landlord class and antagonistic to the tenants.

The Honourable Mr. Mandlik :—I do not take up a position in favour of any particular class, either landlords or tenants; I merely point out that the law has stood for a long time, so that the *onus* has always been on the tenant, in disputed cases, to prove that he has a perpetual tenancy. The Courts have been consistent, and in cases where a resident has showed that he was a resident of a village prior to the grant to the *Inamdar*, they have always placed the *onus* on the *Inamdar* to prove that he had the right to eject his tenant. The clause, as framed, is itself quite uncertain, because I do not see how it can be construed by reason of the antiquity of a tenancy.

On the amendment being put to vote, it was lost by 9 to 2.

* * * *

THE LAND REVENUE BILL.

(Mr. Ashburner moves the second reading.)

7th November 1877.

The Honourable Mr. Mandlik :—When this Bill was discusse in Poona there were several sections, notably the sections with regard to town and village sites, which the honourable member then in charge of the Bill stated he proposed should go provisionally before the public, that they might be commented on and also reported upon by those officers of Government who are considered authorities on revenue matters. Since then I have looked for such reports, but I am sorry to say we have not yet received any. The honourable member at present in charge has alluded to the diversity of opinions on this Bill. Speaking for myself I may say that, if it were a Bill for the consolidation of the existing revenue law merely, as I had hoped it would be, I should have had no objection to it; but, unfortunately, several new provisions of law have been introduced, almost at the end of our labours. No doubt, in one sense, we have been working at this enactment for a long time—for more than three years; but considering that we are going to change a law which has been in existence for more than fifty years, I cannot see that we have taken an unduly long time. I should have been very glad if the work of consolidation, as consolidation, had been strictly carried out, instead of changes being made in the law, many of which I think are changes of very doubtful propriety. I am supported in many of these remarks by some of the Officers who reported against any change being made in the revenue law at all. The Bill interferes with vested rights which I think it ought not to interfere with and I shall vote against the second reading.

THE PRESIDENCY ABKARI BILL NO 3 OF 1877.

8th November 1877.

The Honourable Mr. Mandlik said that the second proviso of section 17 as drafted would prevent any portion of a tree or plant from which an intoxicating drug was produced from being sold to any one except a licensed distiller of or dealer in such drugs. This was objectionable, as the leaves and stump of the cocoanut palm, portions of the bhang plant, and mowra trees, &c., were common articles of sale. He wished to substitute for the words "of such plant, or of the flowers, leaves, or any other portion of such plant," in the 19th, 20th and 21st lines of the section, the words "all those portions of the plant from which any intoxicating drug or material is produced."

The Honourable Mr. Ashburner had no objection to the amendment, and it was adopted.

* * *

The Honourable Mr. Mandlik requested permission to propose a new section. By the vote that had just been passed the owner of trees was compelled to pay the tax in default of the licence-holder paying it, it was fair that he should be allowed to recover it from the licence-holder as a superior holder could recover rent from an inferior holder. He moved that the following section be inserted, viz. :—

> "22A. For recovering the duty paid by the owner of the tries under the provisions of the last preceding section, the said owner shall be entitled to the assistance given to superior holders in recovery of dues from tenants under the provisions of Chapters 6 and 7 of Regulation XVII. of 1827."

The Honourable Mr. Ashburner said he thought the amendment was a very good one, and it was adopted.

The Honourable Mr. Mandlik opposed section 24 on the ground that retrospective legislation in revenue matters was not desirable. He proposed that the section should be omitted.

The Honourable Mr. Gibbs explained that the section was intended merely to continue matters as they existed at present.

The Honourable Mr. Ashburner said the object of the section was to include certain levies that had been made in the district of Ratnagiri, where there are rights of tenure which it was necessary to provide for. It was meant to allay irritation.

The Honourable Mr. Ravenscroft said the section was intended to legalise a collection which had been made for a great number of years but as to the exact legality of which some doubt had arisen on purely technical grounds. No rights were involved; the object was merely to prevent any future discussion on the subject. It was merely a legal technicality.

The Honourable Mr. Mandlik said his objection was, generally, to revenue law being made retrospective. He had always objected, on principle, to retrospective revenue law, and it was on this ground that he objected to the present section.

The motion was lost by 6 to 4.

* * *

The Honourable Mr. Mandlik objected to the words at the end of section 41—"or with imprisonment for a term which may extend to six months, or with both." He thought a proper punishment for a man who neglected to pay certain duties was a heavy fine and confiscation, but not imprisonment. He moved that the words he had read should be omitted.

The Honourable Mr. Ashburner said that would be impossible; the persons who would come under this abkari law were poor coolies, who could not pay fines. If imprisonment were dispensed with, there would be no power, practically, of dealing with smugglers.

The Honourable Mr. Bengali said it was in accordance with his suggestion in the Select Committee that the imprisonment clause was added. There were men to whom a fine of Rs. 1,000 or Rs. 5,000

would be no punishment ; and he had impressed on the Committee the fact that a fine would not be a sufficient deterrent.

The Honourable Mr. Lang considered that the penalties should be severe, but that they should only be in the hands of officers of a high class.

The Honourable Mr. Mandlik thought if the law was made too severe it would be likely to defeat its own object. The sympathy should always be with the officer working to enforce the law ; and when a poor coolie was in danger of six months' imprisonment, because he was found in possession of a pot of liquor, that would scarcely be the case.

The amendment was then put to the vote and lost.

* * * *

With reference to section 51 the Honourable Mr. Mandlik said that, ordinarily, the prosecution had to prove that an accused person was guilty of committing an offence, and he did not see why this Bill shoule be an exception to the rule. He proposed that this section should be omitted.

The Honourable Mr. Lang quite agreed with Mr. Mandlik. His impression was that the presumption always was, that a man was innocent until he was proved to be guilty ; but in this case a man was to be presumed guilty until he proved that he was innocent.

The Honourable Mr. Ashburner said the apparatus made use of for distilling liquor and so evading this Act was of so peculiar a nature, that it was hardly possible for any one to have it in his possession without having committed or intending to commit an offence against the Act ; and it was on that ground that the presumption was against the possessor of the apparatus. The same presumption was found in the Opium Act ; and it had been found impossible to dispense with it in the present Bill. If it were omitted, the whole apparatus for distillation might be found in a house, and if it was not actually at work the offender would be free.

The Honourable the Advocate General :—I may say, also, that a similar section is included in all the English Acts with reference to excise.

Tha Honourable Mr. Mandlik said opium was a dangerous poison and the case was very different, An apparatus for distillation need not necessarily be kept and used for the purpose of manufacturing intoxicating liquors; in fact, he knew persons who had such apparatus in their possession who could not by any means be induced to manufacture intoxicating liquors or drugs, as it was opposed to their religious and social usage.

Lost by 7 to 3.

* * * *

The Honourable Mr. Mandlik objected to the proviso to section 62—"provided always that no action shall lie against any abkari officer in respect of any act for which he has already been criminally prosecuted." He failed to see any reason why abkari officers should be so protected any more than other people, and he moved that the proviso be omitted.

The Honourable Mr. Ashburner:—I have no objection to the amendment proposed. The section was taken from a Bengal Act.

The amendment was then adopted.

The Honourable Mr. Mandlik moved that the 5th definition should be amended so as to define "magistrate" to mean, for the purposes of this Act, first and second class magistrates only. The honourable gentleman said there were many important provisions contained in the Bill which ought not to be entrusted to third class magistrates, and if they were, a good deal more money would often be paid by the accused than would go into the Imperial Treasury.

The Honourable Mr. Ashburner opposed the amendment on the ground that in the outlying districts, if cases were obliged to be taken before a first or second class magistrate considerable delays would take place. A poor Bhil found in possession of a bottle of liquor might have to be marched fifty miles before he could be tried. He also mentioned that third class magistrates formed the class from which mamlatdars are selected.

The Honourable Mr. Gibbs said as to the honourable member's statement that from the third class magistrates mamlatdars were chosen, it might be argued similarly that members of Parliament and Governors of provinces were chosen from among school-boys, but

it would not do to place a boy in Parliament or to give him charge of a province while he was still at school. He had considered the point of loss of time and inconvenience and he thought that would be preferable to placing the powers of this Bill in the hands of third class magistrates.

The Honourable Colonel Anderson was also of opinion that cases under this Act should be tried by superior men to the third class magistrates.

On the amendment being put to the vote it was adopted.

THE BOMBAY MUNICIPAL ACT AMENDMENT BILL NO. 6 OF 1877,

(Mr. Gibbs moves the second reading.)

19th December 1877.

The Honourable Mr. Mandlik—I happen to have been a member of the Select Committee which sat on this Bill and considered it very carefully. The Select Committee also considered the additional recommendations the Town Council made after they had sent in their report. I think a great deal has been made of the point about the buggywallahs receiving the privilege of the franchise. If the payment of Rs. 30 per annum wheel-tax is made a qualification, I think there ought to be as few exceptions as possible, and no reasons have been shown why these people, simply because they are buggywallahs, should not have the franchise extended to them as well as to others who pay the same tax. Then as to the "bludgeon clauses," though the Town Council are now asking for their omission, they had the Act before them previously for more than two years, and did not include this among the suggestions which they sent in to Government as the result of their deliberations. If they have changed their minds during the last few weeks, it may be that they may change their minds again in a few weeks more, and wish to have the clauses re-inserted. I certainly should not support a change in any legislative enactment unless that change was held to be imperative after very careful consideration. With regard to the question of the assessment of Government buildings, I believe they pay the service rates and have compounded for what are now termed the property rates, which arrangement honourable members will find when the facts are placed before them, has been more favourable to the Municipality than if the Government buildings had been assessed by the Municipal Assessor—Government have been paying more in this manner than they would have had to pay had the buildings been assessed in the ordinary way. But I entirely agree with the honourable the Advocate General that we cannot now, without the previous sanction of the Government, entertain any new amend-

ment which will affect the revenues of the presidency. I do not think we need go to the Government of India to sanction every amendment that may be proposed to any measure before we can consider it, but anything which affects the public revenues of the presidency whether it meets our views or not, must be referred to the Government of India before it can be introduced. I have known of cases where the progress of Bills has been stopped for a time in order that alterations of this nature might be made, and the same course might be followed here if it were thought to be necessary. But I do not think the present arrangement is prejudicial to the Municipality, and I am not willing to consent to the proposal at this stage. I think the Bill as a whole will be a great improvement on its predecessors. We have provided for a great check on the house assessments and for a consolidation of rates which will very much decrease the expenses of the Municipality.

THE GAME PRESERVATION BILL No. 3 OF 1880.

4th February, 1881.

(Mr. Ashburner moves the third reading).

The Honourable Rao Saheb Mandlik said:—Your Excellency,—I wish to say a few words with reference to the vote I propose to give on this subject. I have read the debate on the Bill, and I find that six reasons were assigned by the Honourable Mover in its support. The first reason was, that unless Government interfered by such legislation as this, there was reason to fear the game would be exterminated, and we should be deprived of an important source of food. In reference to that I may say that I have taken some trouble in compiling statistics from the Government records, and though the time at my disposal has been necessarily somewhat limited, I find that 50,597 survey numbers, some of which extend over hundreds of acres, are now under the Forest Act as *reserved* forest numbers, and there are, besides, in those same districts more than 18,000 numbers which are *protected* numbers; so that this large portion of the land in this Presidency is now protected by a very stringent law, where all game can flourish undisturbed. Unless the officers of the Forest Department allow game to be killed in these tracts at such seasons as may be laid down by Government, there is no chance of the extermination of game, and the supply of food, as far as it may be availed of by those portions of the community who do avail themselves of it, will be kept perennially well stocked. Then the next ground was, that in case of insects and vermin, such as locusts and rats, certain species of game, or certain birds, would supply an important function in the economy of nature. This remark was answered by one of the Honourable Members present (Mr. Deshmukh) in reference to the plague of rats, and I have since taken some trouble to inquire into the history of these plagues. They seem to be provided for in some of the annual revenue agreements under the term "*itá*". Nothing, apparently, has yet been discovered to counteract the effects of these plagues. If such were discovered in the presence of birds, it would no doubt be one substantial reason for the preservation of those birds; but no

evidence has been adduced, and nothing is discoverable in the history of this country which would throw light on this argument in favour of the Bill. That extends to the second and the third reasons assigned by Mr. Ashburner. Then the fourth reason for the Bill was, that it would supply *shikar* for the District Officers. Really this is a very weak reason for inflicting such a new law on the community, and I think that, with the forest tracts which are now being reserved in almost every village,—I may say to the annoyance of the poor people of the country,—there is so much *shikar* now that, with all that the District Officers can do, there is more *shikar* than can be availed of even by all the Native gentlemen of the country who may be inclined to join in these sports. That brings me to the fifth ground, on which I have only a few remarks to make. The fifth ground is that *shikar* will bring the Native gentlemen of the country into more immediate contact with the District Officers, so as to promote a better understanding of each other. This is a statement on which I must respectfully join issue with the Honourable Mr. Ashburner. Having taken some limited part for the last twenty-eight years in various movements and in various offices, I may say that I have been thrown into as intimate contact with the highest European officers in this and other Presidencies as most Native officers of the Government (and I have been one for very many years) have been. The only enjoyment which is yet not common between Native gentlemen and European gentlemen is the single one of dining together. It is a very trite remark, but dining was made for us, we were not made for dining; and I think European and Native gentlemen can mix together as fully, even barring that very essential amusement and enjoyment, as they can do in the chase. It is only one Raja out of a hundred thousand Native gentlemen, who does make *shikar* his daily occupation. The difficulties in the way of Native gentlemen generally joining in *shikar* are numerous; the Arms Act is perhaps one of the last. That being the case, I must say that setting aside the rigid rules of caste, which only apply to a very small portion of those with whom the District Officers can afford to mix socially and freely, the above is a very weak reason for enacting such a law as this. Then the last reason is that Madras has gone ahead of us in reference to such a law, and that that is a reason why we should copy Madras. Now, the only district in

Madras where there is a sort of Game Bill, or rather an Elephant Bill is the district where elephants are to be found, and the other small district is the Nilghiris, in reference to which in 1879 a small Game Bill was passed. But without disputing the title of Madras to be ahead in regard to the matter of game preservation, I say that from 1818 to 1880 we have got on very well without such a law as this. And this is a law which will increase the powers of a class of people, namely, the common Sepoy, which I look upon as one of the worst evils,—an evil to which the attention of Government has been repeatedly directed, and which Sir George Clerk, one of your predecessors in this chair, Sir, denounced as one of the greatest evils in this Presidency. Every Sepoy can pester a Native gentleman, however high his rank, in a way which, mixing as I do intimately with all classes of the community, I can bear better witness to than gentlemen at whose mere approach the Sepoy will run away. I think unless stronger reasons can be assigned for such artificial legislation as this, which really has nothing to do with the State system, Government ought to be very chary of multiplying laws, the consequences of which we can easily foresee. I think there is plenty of game, and plenty of birds, more, probably, than can be consumed; and whatever care you may take, the annoyance to the agriculturists which will be caused by the subordinate agency is such that if it can be avoided, I trust it will be avoided. It may seem a light thing, but this act creates an artificial set of crimes which are not known even to the Penal Code, the best criminal law we have had in this country; and I do think this Council ought to pause until it has better evidence that such a law is wanted. Until we are compelled to preserve game in the interests of the masses of the country, in order to increase our food supplies, we should not enter upon legislation of this kind. With these remarks, Sir, I shall consider it my duty to oppose the third reading of the Bill.

CONSIDERATION OF THE COTTON FRAUDS BILL IN DETAIL.

4th February, 1881.

The Honourable Rao Saheb Mandlik proposed that Section XIII. should be omitted. He said it was proposed that the Act should not be brought into operation except on the complaint of some aggrieved individual. If the proof of fraudulent intention were dispensed with, grievous results would follow. If he had known that the Bill would be considered in detail at the present meeting, he should have brought cases to show that such things had taken place.

The Honourable the Advocate-General :—The Bill provides that an intent to defraud must be proved, but it will not be necessary to prove that it was *A* or *B* in particular that was intended to be defrauded.

The Honourable Rao Saheb Mandlik said mixed cotton might be found in the possession of a man who did not intend to sell it, but it would only be necessary to go to a Magistrate and say that it had been found, without proving an intention to defraud any individual person to get the man convicted.

His Excellency the President :—It would appear that this Bill is so far an improvement on the old law, that whereas the Act of 1863 made it penal to adulterate cotton, the present Bill provided that it must be done with a fraudulent intent. It would be very difficult, however, to prove an intention to defraud any particular person. Supposing a man up-country pressed cotton in an unlicensed press and imported into the bales some foreign matter, or mixed two kinds of cotton together, and sold the bales as best Surats, or something of the kind, and the cotton was sent to Bombay for sale in the market in England ; the section to which Mr. Mandlik objected rendered it unnecessary to prove an intention to defraud any particular person. How could that be an injustice to anybody ? A man would commit a breach of the Act who fraudulently—for that was essential—omitted to observe certain prescribed rules. How was there any injustice

done in rendering it unnecessary to prove his intent to defraud any particular person ?

The Honourable Mr. Ashburner said the clause was introduced in order to meet the objection of the Cotton Frauds Department that the Acts had been inoperative owing to the difficulty of proving fraudulent intent. It was argued, " How can you prove fraudulent intent ? A man's intent is buried in his own mind ; and though the act he may be found guilty of is obviously fraudulent—for instance, pouring water into a bale of cotton—it is difficult to prove the intent as directed against any particular person."

His Excellency the President remarked that no person could have an honest intent in mixing seed, dirt, stones, and other foreign matter with cotton. Taking the specific offence, it must be committed with a fraudulent intent.

The Honourable Mr. Mandlik :—I think that in clause 9 (*b*) the mere mixing of two varieties of cotton is made fraudulent.

His Excellency the President :—But if you will look at the beginning of the section, you will see it must be done fraudulently or dishonestly.

The Honourable Mr. Mandlik said that by the Penal Code whoever did anything with the intention of causing wrongful gain to one person or wrongful loss to another person was said to do that thing dishonestly. If that applied to Section 9, he did not see why Section 13 was wanted.

His Excellency the President :—That is the point. We propose to say it shall not be necessary to prove that any particular person is intended to be defrauded.

The amendment was then put to the vote, and was lost by six votes to four.

THE COTTON FRAUDS BILL No. 3 OF 1880.

4th February, 1881.

(Mr. Kemball moves the third reading.)

The Honourable Rao Saheb Mandlik thought the argument that Government should now have anything to do with special legislation of this kind, was answered by one single consideration. If it was necessary to legislate specially for cotton, because it was an article of export, it would also be necessary to legislate specially for every other article of trade in regard to which the same risk or danger of mixing or adulteration might exist. With due deference to what Colonel Anderson had said regarding the short-sightedness of the ryot, he would leave the ryots, with all their short-sightedness, to the ordinary operations of the law. The ryot, when better educated—and Government was doing its very best to extend education—would know how to attend to his own interests. He did not think that anything further than the Penal Code was required to regulate the relations between buyer and seller. No doubt some of the provisions of the present Bill were not touched upon, except in an indirect way, in the Penal Code ; but when a contract was made, if there was any fraud in carrying it out on either side, the remedy was open to enforce the proper carrying out of the contract, if necessary, by recourse to a Magistrate. As he took it, the Penal Code was quite sufficient to prevent cheating, either, on one side or the other, and that was, after all, what all the sections of the present Bill, or any other sections that might be drafted, would amount to. He had stated at the last sitting that people were often taken up because two kinds of cotton were mixed in one bale and were punished. An instance of this was given in the "Indian Law Reports, I Bombay Series, 228, *Reg.* v. *Hanmant Gavda*," where one of the Magistrates said that although there was no direct evidence as to the person charged having personally adulterated the cotton, or caused it to be adulterated, still the cotton was so found in the man's possession and the natural presumption was that he had adulterated it or caused it to be adulterated. On that ground he (Mr. Mandlik) had objected to Section

13 of the Bill, and he thought the whole basis on which such a law must be built was so exceptional that, in the interests of the cultivator a man should be left as free in this matter as in all his other transactions. If they accepted the principle that they must protect him in regard to cotton, they must protect him also in regard to rice and every other article of trade. Speaking from a somewhat large experience of the ryots—and he was himself a ryot—he must say such protection was now no longer necessary. 1863 was an exceptional period, when the merchants themselves, forgetful of their own best interests, had recourse to the Legislature; but he thought that even then, if they had left things to the natural laws, they would get over their difficulties all right. He should protest himself against such an Act as that proposed, especially as the Government Commission, presided over by Mr. Rogers, had condemned it as unnecessary.

THE SIND VILLAGE OFFICERS BILL No. 3 OF 1881.

2nd April, 1881.

(Mr. Ashburner moves the second reading.)

The Honourable Rao Saheb V. N. Mandlik said he had understood that to a limited extent, but not largely, the support of the Honourable Mr. Ashburner was given to his view in regard to the remuneration of village officers by grants of land; that was to say that in the abstract the Honourable Mr. Ashburner was of opinion that it was desirable, as far as possible, to connect village officers with the land. At present it was said that there were very many difficulties in carrying that plan out in Sind, where, he believed, the land was not so valuable as in the other parts of the country. That being the case, he supposed the Bill would have to be passed in its present shape; but, notwithstanding, he thought that when the country was in a prosperous state, the payment by land could be managed as easily as payment by cash, seeing that all powers with reference to such lands were vested absolutely in the Commissioner; and it would be more in accord with the feelings and customs of the people.

THE PRESIDENCY POLICE ACT AMENDMENT BILL No. 7 OF 1881.

20th July, 1881.

The Honourable Mr. Ashburner having asked His Excellency the President to suspend the standing orders,

The Honourable Rao Saheb V. N. Mandlik observed that the Bill invested the police with very large powers; and as the law now proposed to be repealed had been in existence for more than twenty years, it should not be altered except after mature consideration, and he would therefore beg of the President not to suspend the standing orders.

The Honourable Mr. Ashburner:—It does. But such powers are already vested in the police with regard to retail dealers. Why then with-hold them from whole-sale dealers who require supervision quite as much as the retail dealers?

The Honourable Rao Saheb Mandlik:—The case of the whole-sale merchants stands entirely on a different footing; and we know from the recent case at Pareil, where several respectable Parsi merchants were illegally arrested on blank warrants by some police men as common gamblers when they were not gamblers at all, how the inferior Police were likely to behave.

His Excellency the President remarked that he thought it was rather a dangerous power to give to "any officer above the rank of constable" to enter any premises and examine weights and measures at his own discretion.

After some discussion the Honourable Mr. Ashburner asked that the second reading of the Bill might be postponed.

THE MHOWRA BILL No. 3 OF 1882.

6th July, 1882.

(Mr. Ashburner moves the first reading.)

The Honourable Rao Saheb Vishwanath Narayan Mandlik :—I regret I must oppose the first reading of this Bill. It is based entirely on a wrong principle. The Elphinstone Code left pure *toddy* untouched. The last Abkari Act erred exceedingly in selecting for taxation an innocent article of food which does not inebriate people and which in its unfermented state should never have been taxed. We are now asked to add to that error. For as regards the Mhowra flowers I may mention that it is not the Bheels and other wild tribes alone that use them, but they are used as common vegetable food by others, and chiefly the poorer classes. They are also used as fodder for cattle. It may be that liquor is made from mhowra as it is made from the date fruit or from the juice of the sugarcane or any other plant, but if you place mhowra flower under the penal law, you may do so with perhaps equal propriety with many other articles of food. I should be glad if I could concur with the statement that many poor people do not live on fruits like *karunda*, but such is not the case, for thousands are obliged to live on fruits like these and also on mhowra.

His Excellency the President :—It is a berry, is it not, the karinda ?

The Honourable Mr. Ashburner :—Yes, karanda is, but mhowra is the flower of the Bassia latifolia.

The Honourable Rao Saheb Vishvanath Narayan Mandlik :—*Karanda* or *karavunda* is one, *kárinda* is different: the latter has two varieties, one sweet and one species is bitter, and the bitter are boiled with tamarind and used by thousands. I have seen many poor people in the district actually using them as an article of food. I think the present Act, as it is, is very severe. It has sought to do more than is necessary by making an inroad on the ordinary articles of diet. The Statement of Objects and Reasons speaks of

officers wishing to guard against Mhowra when the last Act was passed. I saw no paper then before me when discussing that Act. It is the severity of the present Act that is at fault. The Honourable Mr. Ashburner has alluded to affrays. I may tell the Council it is the Act, and the system of working it, that are probably the cause of these affrays. Some time ago a large number of the liquor-contractor's men with lighted torches came at night and aroused a whole village of mine, to find out, I suppose, some illicit distillation. The matter was brought to the notice of the divisional authorities, but I have not yet heard anything about it. My tenants used to pay me formerly annas 4 per tree per year and use the fruit as an article of food with their rice, but they cannot do that now unless they pay Rs. 9 as a tax per tree, and in some cases I believe they pay 11, and that for a large number of trees, fifty and upwards, at a time, so that the law as it is prevents a large number of people who live altogether from hand to mouth using what is to them an ordinary article of food and compels them to resort to drinks of a very questionable tendency. Every effort should be made by those in authority in this country to limit as far as possible the consumption of spirituous liquors. The tendency of the undue severity of the Abkari laws is to increase the consumption of spiritiuous liquors and decrease the consumption of those that are comparatively harmless. The Government of India have laid down in a despatch to the Secretary of State for India that when special or heavier assessment is placed on a plantation or lands growin g valuable produce (such as cocoanut trees and other similar trees), no extra taxation should as far as possible be levied on the fruits of those trees. Whilst the excise laws must always be maintained with proper severity, it ought still, I think, to be the object of the Legislature, as far as possible, not to deal severely with ordinary articles of food, and also to restrict the use of spirituous liquors. If we are now to go to mhowra, we may next go to dry dates and sugar juice and other such articles. It seems to me as if the Abkari Department having exhausted its pills wants us now to swallow the box, and for my part I decline to do so. I shall therefore vote against the first reading.

(H. E. Sir James Fergusón moves the second reading.)

The Honourable Rao Saheb V. N. Mandlik :—Your Excellency, —The course which the Government have adopted—Your Excellency moving the second reading of the Bill on this occasion—compels me to explain my reasons for opposing it at greater length than I should otherwise have done. The reasons which, on the last occasion, led me to suggest that if any amendment of the Abkari law was desirable, it was so in the interests of both the Government revenue and the cause which the Government have at heart, namely, the promoting the sobriety of the population, that the stronger drinks should be discouraged, and that the milder drinks, such as toddy (which in its unfermented state is not a spirit at all, and in its fermented state is very much less injurious than any kind of distilled liquor) should be rendered free, that is, free to those who own the trees, but not free in its fermented state for the purpose of sale; and that for the sale of all fermented liquor the Government ought to make such rules and restrictions as would be necessary not only for the protection of the people against drunkenness. In that remark there is no interest of any particular class concerned, though I am quite sure your Excellency will agree that the interests of any large class should be also consulted by this Council. The papers your Excellency has now read are being considered by Government, who always wish to promote sobriety and other good qualities in their subjects; but these very papers show that in the coast talukas in which the drinking of toddy was common there has been no great impropriety of behaviour except in some 38 or 40 cases. Therefore whatever distress the people may have suffered from the change in the law, still they have borne all their trouble, if they had any. I submit that in such a case the revenue could only increase by the larger consumption of liquors of a more injurious kind than common toddy. On the last occasion I stated a case by way of illustration; but I have since consulted the Settlement Records of the Government, and they show that in the coast districts the assessment as regards trees has been increased in some instances from eight annas and one rupee

to nine and eleven rupees a tree. I am sorry to say that as I am a person who, owing to caste as well as to education, has not touched any kind of liquor, I cannot say what sort of thing toddy is; but I know from our college lectures, and from unimpeachable evidence, that toddy in its pure state is not an injurious drink. It was stated at this Council on the occasion when the last Abkari Bill was under discussion I believe by the Honourable Sorabjee Shapurjee Bengali, that toddy was a very healthy drink, and that if there was any smuggling, it was probably due to the very large enhancement of the tax on toddy trees. The history of Great Britain and all other countries shows that if a tax is unnecessarily severe on any particular product or commodity there will be some attempts at smuggling. When a law is passed, I do not sit here or anywhere else to argue that it should not be as severely administered as possible, but when we are thinking here of an amendment of the law, and it is suggested that we should make taxable an article which on all hands is admitted to be as nourishing as toddy, I think I am right in speaking upon the subject. On that point I have nothing more to add than this, that I think if this change of the system of taxation interfers with, the system which the revenue settlement has made in regard to trees, I hope the Government will look into their revenue arrangements and see how far the two systems clash with each other. I now take the subject of mhowra on which also, I believe, my remarks have been misunderstood. I do not propose to say anything of what has been written *pro* or *con* in the public press. If the public press consider that when I spoke here I had not seen mhowra in travelling through the country, and seen the state of the people for myself, all I can say is, I don't give much credit to their judgment and must bear their criticism as well as I can. But it was said on the last occasion, I think by the Hon'ble Mr. Ashburner, that Mhowra was not very extensively used as an article of food; but the remarks of your Excellency to-day hardly bear out that impression, and I beg leave to say that the reports of the Government itself show that it is very extensively used as food in several collectorates. In Elphinstone's India, Edition 3, page 193 we find the following: "In many parts the berries of the *mahua* tree form an important part of their food." Mr. Harrington Bulkley, in his letter dated 24th November, 1863, to the Superintendent of Revenue Survey, Gujarat, para, 6,

says : " The poorer class of cultivators have the barest means of subsistence during the hot weather. They contrive to eke out a ' miserable' existence through the instrumentality of mangoes, khimies, and mhowra berries, which frequently for months form their only food." And again the same officer, at page 713 of the same work, puts the Koli heads of families at 6,869, and other castes at 7,708, and of these he again repeats that they live on mangoes, khimies and mhowra berries. In a letter from the Collector of Kaira, No. 48-A., dated the 31st January 1855, to the address of the Revenue Commissioner, N. D., Appendix to Part II. General Report on the Bombay Presidency Census, 1872. I find the following : " The Kolis are not nearly so industrious as the Kunbis, and the surplus produce of their fields, after paying the Government rental and the Sowkar's dues, is often all consumed by the end of February or March : consequently during the hot season they subsist on the fruit of mhowra trees or some wild growing vegetables, or by collecting and selling firewood. When impelled by want, they sometimes commit thefts and robberies, but the police, and especially the improved existing system, acts as a restraint and bar to their predatory habits. Their ignorance is frequently assigned as the cause of their poverty, and it is a matter of importance to educate this class of our agricultural population, to render them more industrious, and thereby to reclaim their wild habits. The Pateedars have generally at least a pair of bullocks and all agricultural implements, but many of the Kunbis, and most of the Kolis and other agriculturists, possess only a single bullock and few of the most necessary implements of agriculture. Those who have only a single bullock of their own mutually lend their bullocks to their neighbours or relations, and receive the loan of theirs in return, and thus each in his turn has at his command a pair of bullocks whenever required for working his field. Those who have no bullocks of their own obtain them on hire, in lieu of which (if they are unable to pay the hire in cash) they render manual labour, equal to the amount of hire, to those from whom they may have obtained bullocks ; and the same thing is done with respect to implements. Sometimes cultivators obtain the gratuitous use of bullocks and implements from their relations who may be in better circumstances. The majority of cultivators obtain so small a profit from grain cultivation that no surplus is left to enable them to pro-

vide themselves with a pair of bullocks and the full complement of agricultural implements. The heavy rates of interest charged by the Sowkars on granting loans would seem also to prevent their borrowing money for the purchase of cattle and their necessary implements. Their wretched condition is to be attributed to the fact that they adopt no agricultural improvements, but still raise the same crops, and in the same manner, which their fathers did ; but the abundance of grain and other produce renders it very cheap, and a large portion of the surplus produce after paying the Government rental, goes to the Banian or money-lender on account of advances in money or grain previously made, especially during the hot season, when the poorer classes have exhausted their monsoon supplies of grain. Their circumstances might be improved—they would be benefited if they raised more exportable produce; but this is often attended with additional expense on a slackness of local demand, which discourages the increase." Again, in the Report of the Indian Famine Commission, Part II., p. 81, occurs the following paragraph : " Maize, or Indian-corn (*Zea mays*) does not form so large an element in the food of the people as might have been expected from the fact that it is grown to some extent in almost every part of the country, and can be grown everywhere, and in Southern India at least, at any season in the year. In practice, however, it is commonly only sown in small garden plots, and much of it is consumed by the growers before it ripens, very little coming into the market. It is rarely ground or exposed for sale in the form of meal. Other vegetables, such as spinach, pumpkins, carrots, and potatoes, are also cultivated, for the most part for home consumption ; only near large towns are they grown for the market. The use of them as food is universal, except in the case of those families who do not possess land, and who are not rich enough to buy them. Such persons often supply their wants by wild herbs from the fields and waste lands, which are found by experience to be wholesome and palatable. The leaves of the mustard and rape and the gram (Cicer) plants are also very frequently picked from the fields and cooked for food like spinach. The fruit of the mhowra tree (Bassia latifolia) is an important element in the food of the people wherever that tree is abundant, which it is in most parts of Central India and the Central Provinces, and many of the wild tribes in these tracts subsist almost entirely on this and on similar

forest products. The mango, plantain, and cocoanut also enter largely into the food of the country." Then as regards drunkenness the statistics your Excellency laid before us are of course very useful, but although so much has been stated in regard to the lower classes of the people, I am sorry to say that, although there may be no blame attached to the Abkari Department, there is not the slightest doubt that drunkenness is largely on the increase among the higher orders. The Hon'ble Mr. Elphinstone, in his report to the Governor-General, dated October 1819, says : "Drunkenness, the peculiar vice of the lower orders, is almost unknown in the Maratha country, which has thence a decided superiority in morals over the old provinces. It arises from the discouragement to the sale of spirituous liquors, and as the revenue from that source is insignificant, we should probably do well to prohibit it altogether. Public opinion, and above all the opinion of the caste and the dread of expulsion, are the restraints on vices. These powers are, in the Maratha country, in the hands of the whole caste. In the Carnatic there are regular censors to each caste called Gunnacharies, besides religious Goorcoos, invested with great power; but these institutions are converted into the means of gain, and the morals of the people are there decidedly worse than in the Maratha country. The other vices are not more rare, and drunkenness is common in addition." Now I am sorry to say that even a casual observer who visits Poona must notice that the increase of drunkenness is something appalling. Only a year or two ago, one of the gentlemen practising in the higher courts of Poona, a Brahman of the highest class, was found dead from drink in a house of ill-fame. Such a thing twenty years ago would have excited horror, but now such a man's state is looked on with more indifference, the vice has become so common from one cause or another. I think if your Excellency ordered a return in regard to the license shops in the city of Poona, they would tell a tale at which you Excellency would be surprised. I don't say the Abkari Department is to blame; no doubt it is the people themselves. But when you have had a statement of the reduction in the number of stills, I think the Abkari Department should set its face against the opening of more shops and issuing of more licenses. That, perhaps, is the most practical mode of checking drinking. Speaking for myself, I feel it to be a most anxious duty that I have to discharge at this Council; and I should

not descend to make a statement I was not prepared to prove. We have to sail here between the Scylla of departmental advocacy and the Charybdis of outside public criticism. And there are occasions when your Excellency will admit, we are entitled to consideration for the difficulties with which we are surrounded. I do not propose to discuss any newspaper remarks here; but if a great deal of the information now placed before the Council had been placed before it at an earlier date as to the extent and scope of the Bill, the way in which it is to be worked, &c., there might have been saved, not all the remarks which have fallen from me, but a good many of those remarks. His Excellency will perhaps bear with me when I say that in the absence of any data no doubt we may take the Statement of Objects and Reasons itself to be the justification of the measure. But I should not like to see the work of discussion rendered idle; for my own part, I would sooner have no discussion at all if I could not join in an intelligent criticism and examination of everything that comes before us. In this particular question of the Abkari laws, the principle is involved whether, after taxing trees, the department may also tax the produce, and if it may do so, on what principle the taxation of the trees ought to be conducted. These are questions that have been several times discussed by the Government of India, and it was on the ground that now there was an opportunity for the discussion of this principle, and also advocating the return if possible from ardent spirits to simplar liquors, such as toddy, that I suggested on the last occasion, and suggest now for the consideration of Government, whether under such restrictions as may be considered necessary by the department and sanctioned by Government, it would not be advisable to make toddy a less costly drink. In the case of the poorer classes it often means a few annas a month which, if saved, turn the scale. The richer classes can bear their own burdens and can make themselves heard; it is the class that cannot whose case we are now considering.

* * * *

The Honourable Rao Saheb Vishwanath Narayan Mandlik:—With regard to Section 2 of the Bill I see it is proposed to substitute for the words "A Magistrate of the first or second class" the words "A magistrate of the first, second or third class." I suggest that

the words "third class" be omitted. This matter was thoroughly discussed when the Act was passed, and it was then decided that we should not go below 2nd class Magistrates. No sufficient case has been made out for a change, and I shall therefore vote against the new section.

The Honourable Mr. Ashburner:—The object of inserting those words is that if people charged with an offence under the Act may be taken only before a first or second class Magistrate they will be subjected sometimes to great hardship. A man may be found with a bottle of liquor in his possession, and if tried by a third class Magistrate may be fined four annas and go his way; but if he was to be tried by the other Magistrates then he may perhaps have to travel 50 miles before his case can be settled. I do not think any one can raise an objection that a third class Magistrate is not of sufficient standing or experience when he can try and dispose of cases of theft and assault and inflict fine and imprisonment. I strongly oppose the amendment suggested by the honourable member.

The amendment was lost.

* * * *

The Honourable Rao Saheb Vishwanath Narayan Mandlik said he should oppose Clause 3 which amended Section 14 of Bombay V of 1878 by inserting the words "No toddy-producing tree shall be tapped."

The Honourable Mr. Ashburner said this was merely a verbal explanation of the Act. It had been argued by certain clever persons that a tree might be tapped and yet no toddy drawn. The amendment was introduced to make it clear that the offence consisted in tapping the tree.

His Excellency the President said that if a man tapped a tree the Abkari officer came round to tax it. The man might say, "I have tapped the tree but I have not drawn toddy from it,' and it had been said that a tree must be tapped in order to see if it would run. A man might therefore tap a tree and profess it did not run whilst he was really getting toddy from it.

The Honourable Mr. Ashburner said that if it were shown that the tree did not yield toddy the Abkari Department would allow another to be substituted for it.

The Hon'bleRao Saheb Vishwanath Narayan Mandlik said would bring to the notice of the Council one case in which the amendment would produce unnecessary hardship. A tree was often tapped or rather cut, not for toddy but for what formed an important medicine in cases of consumption. The spikes of the tree before they flowered were often cut for this purpose.

His Excellency the President was of opinion that that could hardly be called tapping.

The Honourable Mr. Ashburner said it was entirely different. The process of tapping consisted in making a hole in the centre of the tree, whilst cutting the flower or spike was very different. The offence consisted in the intention. It would be an easy point for a man to prove whether he cut the tree for medicine or other purposes.

* * * *

The Honourable Rao Saheb Vishwanath Narayan Mandlik opposed the substitution for Section 41 of Bombay Act V. of 1881 of the following section: "Any Commissioner or Collector or other Abkari officer duly empowered in this behalf may, when any person has been arrested or thing seized under Sections 35 37 or 40, inquire into and deal with the case in the manner provided in the Code of Criminal Procedure for the investigation of an offence cognizable by the Police." The prosecution of offences ought to rest with another Department.

The Honourable Mr. Ashburner said it had been found to be a great evil that on the slightest complaint a man was sent of to the police when a simple enquiry would have elicited the fact that no offence had been committed. This would be a protection against oppression by lower subordinates of the Department.

The Honourable Rao Saheb remarked that a junior officer might be empowered.

His Excellency the President asked what officers were now empowered? They should be men of a certain standing.

The Honourable Mr. Ashburner said that at present they had no power whatever. The power was only invested in the Police. The duly empowered officer would only investigate, not try.

The Honourable Rao Saheb said the officer would have to try and deal with some cases. Unless he did so every case must be sent to the Police. Every case should be handed over to the Police. No officer ought to have the power of doing that which belongs to another Department.

The Honourable Mr. Ashburner said that cases in which no offence had occurred ought to be enquired into on the spot. Why show this distrust of Government officials? Abuses might of course occur, but giving people power and punishing them severely when they abused it was the way to prevent them.

The Honourable Rao Saheb Vishwanath Narayan Mandlik argued that the Prosecuting Department and the department that prepared the case should be separate. He did not think that a double set of powers should be entrusted to some of the officers.

The Honourable Mr. Ravenscroft supposed the Honourable Rao Saheb thought the Abkari officers might have bias.

The Honourable Rao Saheb Vishwanath Narayan Mandlik replied in the affirmative.

His Excellency the President observed that the officers of the Forest Department had much greater powers entrusted than was proposed to be entrusted to the Abkari officers.

The Honourable Rao Saheb Vishwanath Narayan Mandlik said the principle was a wrong one, and he was sorry such power was allowed.

THE PROVINCIAL ROADS BILL No. 7 OF 1882.

7th December 1882.

(Major-General Merriman moves the first reading.)

The Honourable Rao Saheb V. N. Mandlik :—Your Excellency there are three sets of Acts—The Tolls Act, the District Municipal Act, and the Cantonment and Municipal Act—which bear upon this subject. Although the honourable mover proposes to make some distinction by which the poorer classes may be let off in regard to the payment of such taxation, I think it will be found impracticable to make a satisfactory gradation of those classes in a Bill of the nature of that now before the Council. It would be something like the wheel-tax within the limits of the city of Bombay, and I think, therefore, that the gentlemen of the Select Committee will do well to bear in mind not only the actual incidence of the amount, but the worry and annoyance that would be caused.

THE PHARMACY BILL NO. 8 OF 1882.

(Mr. Ravenscroft moves the first reading.)

The Honourable Rao Saheb V. N. Mandlik:—I observe that the evidence on which the Bill which the honourable member moves is founded, has not been circulated to the members of this Council, and in the absence of that I think it right to say that though the object of the Bill is commendable, I, for my own part, consider that some of the principles may very fairly be objected to, especially when it is proposed to include in the Bill a provision that it may be extended to the entire Presidency. I am bound to say that a law of this nature should not be so hastily enacted for a whole country larger than some of the kingdoms of Europe. It was only in 1851 that the first graduates of the Grant Medical College began to practise and there is nothing in this Bill with regard to dispensaries, which are very carefully supervised no doubt, but which are practically under the management of persons who under this Act are not touched at all. Again, there is a very large and a useful class who seem to have been altogether left out. They are the students of the class trained under the auspices of Government at Poona. These people after they pass their examinations, are placed in charge of public dispensaries. Still they do not get the license from any recognised body, nor are they registered under the English Pharmacy Act. This Bill declares them incompetent to do what they are pronounced fit to do by their examiners after a very careful examination conducted by medical officers of Government. They are now in charge of a very large number of public dispensaries in the Bombay Presidency. Then as regards the general nature of this Bill, the matter contained in Section 13 has been introduced into the corresponding provisions in the Bengal Act, and I find it is strictly a provision worked by the Municipality at Calcutta, but is by no means so stringent as the provisions of this Act. While it (the Bengal Act) exercises a certain superintendence over the vendors of European medicines, it at the same time gives to the Municipality the power of supervising all such dispensaries. I hope the Committee that will have charge of this Bill will be good enough to record such evidence

as may be produced. It is very odd that the only case of death which occurred in the city of Bombay, in regard to dispensing drugs, happened two or three years ago owing to an accident in a well-regulated dispensary in the city kept by a European firm. When we make the necessary provisions, we ought to take into account that nearly all the dispensing of medicine in this country is in the hands of those to whom the honourable mover referred under Section 13 of Act. Many of these deal in such medicines as dhatura, and a large number of other psoions not found in the papers connected with this Bill, and which have been dispensed to the masses from a time almost beyond reach of ordinary history. While, therefore, as regards poisons the very greatest stringency may be observed, in regard to drugs generally I think the provisions of this Bill either do not go far enough or do not lay out in sufficient detail those classes which are saved from the operation of the Bill, or which ought to be so, before the Bill becomes law. I throw out these observations for the information of the Select Committee, who will, I trust, attend to them. I trust also that all the Bengal provisions will be consulted. If necessary, the Municipality of this city, who are interested in a Bill of this kind, may also be consulted. As regards the proposal to extend the provisions of the Bill to the whole Presidency, I am sorry I cannot give my consent to such a proposal. See what our medical requirements are! In all the large towns, except Poona and Karachi the only people who *prescribe* are graduates of the Grant Medical College and officers of Government; but the masses of the people are treated by our own medical men.

MINUTE OF DISSENT ON THE PROVINCIAL ROADS BILL, No. 7 OF 1882.

I regret I am obliged to dissent from my colleagues as regards the principle of this Bill. I think it is quite unnecessary, because what it seeks to do can be accomplished by the laws now in force ; and those laws will do it much better than can be possibly done by this Bill.

The quarters which this Bill seeks to legislate for are certain portions of Poona, outside the city and cantonment limits, and similar "local areas" elsewhere. By section 4 clause 1 of Bombay Act VI of 1873, any "places or any parts thereof" may, by a notification be constituted into a Municipal district, and I do not see any valid reason for not bringing all the residents in these places under the general Municipal law of the Presidency.

Such being my view of the matter, I think the inclusion of these new "local areas" within Municipal limits will bring their general conservancy under uniform Municipal rules. And from my own knowledge of Poona and other cities, this is a thing which should be done at once. For, in these places, many compounds are often kept unclean, and their owners or tenants who derive the benefits of Municipal improvements in the cities close by, do not at present pay their due share for them. If these "local areas" therefore are annexed to Municipalites (and it has not been shown that they cannot), the whole object of this bill will be attained ; and in a much better way.

I have carefully read the Memorandum sent to me. But under clauses 1 and 3 of Bombay Act VI of 1873 it seems to me that it is entirely discretionary with Government to act on these provisions ; and I can see no valid reason why Poona should object to include large and rich strips of country, likely to yield a considerable revenue ; or Government should sanction such objections if they are raised by the Poona Commissioners.

I have nowhere advocated the annexing of mere roads to any Municipality as the Memorandum supposes. If there is to be no

private property in Cantonments, I do not see how Cantonments can ever be formed into Municipalities. It is a misnomer to use such a term in connection with them. In that case all the strips may be attached to the cities, or new municipal districts may be very properly constituted of such tracts; and that is perfectly both within the letter as well as the spirit of the Act of 1873.

From what was elicited at the discussion in the Committee, I find that (at least in Poona) the classification of roads is very imperfect and arbitrary. If the divisions are properly made, the whole work ought to be done by the City and Cantonment Municipalities, the Government contributing a fair share from Provincial and Imperial funds. Because some of these roads are Imperial, and others Provincial, the expenses of their construction and repair ought not to fall on Municipalities. In Poona, at least $\frac{3}{4}$ths of such expenditure ought to be borne by Government; for it is their troops, artillery, and Commissariat who use and wear away the roads more than thd public.

The unnecessary multiplication of laws interfering with the daily transactions of the people is itself a great evil; and even if a few thousand rupees could not be raised by our existing laws (and I submit in this case they can be raised), I would rather that the few thousands were sacrificed than help to pass new laws to raise them, New laws involve the creation of new departments and organizations which ultimately press unduly on the State and the people, and I should be no party to them unless their necessity coul'd be satisfactorily made out.

(Signed) V. N. MANDLIK.

1*st January* 1883.

MINUTE ON THE BOMBAY PHARMACY BILL.

(Entitled a bill to regulate the sale of poisonous drugs, No. 8 of 1882)

I have carefully read the evidence on which it is intended to formulate this Bill and I am sorry to say that that evidence literally amounts to nothing.

On the 23th of May 1881, the Commissioner of Police, Bombay, writes a letter No. 1551 of 1881 to the Secretary to Government, reporting that two cases of mistakes have been made "in the compounding of medicines at the establishment of Messrs. Kemp & Co, of this city, and in which one gentleman lost his life and another person very nearly died."

The second paragraph of the Police Commissioner's letter runs as follows:—

"The firm itself occupies otherwise a very high reputation among the medical men of Bombay, but from the fact that in so well regulated an establishment mistakes are made which result in the deaths of persons like the late Chevalier C. Grondona, Italian Consul General, I think it may be assumed that in smaller establishments of the kind which are not near so well and carefully conducted, dangerous errors are even more likely to occur."

This assumption, therefore, of the Police Commissioner, is at the bottom of the whole Bill. For there is not a scintilla of proof throughout this compilation that any other single case had occurred and for the cure of which I presume this act is intended. What follows the Commissioner's letter may, therefore in my humble opinion be fairly taken as the ordinary sample of procedure that results in the elaboration of such measures which without any exaggeration whatever, may fairly be taken, to be specimens of purely speculative laws founded on the supposed analogy of Europe where however no such real equality of conditions exists.

The Police Commissioner's letter is in due course referred to the head of the Medical Department, Acting Surgeon General Moore, who thinks, it is a good idea, for if Pharmacists and chemists in Europe have been legislated upon, why should they not be so in Bombay? It is forgotten, that the few places where English prescriptions are made up, are owned either by English chemists or by the

graduates of the Grand Medical College or Licentiates of our University who keep their own dispensaries or patronise those of their own choice.

The largest practice amongst the community is in the hands of *Hakims*, *Vaidyas*, *Kavirajas* as they are called on the other side of India. This class has been specially excluded from the operation of the proposed Act, and this has no doubt been done in pursuance of the instructions of the Government of India (Vide letter from the Government of India No. 637 of 10th May 1882 to the Government of Bombay).

To return to the procedure of this Bill, the Acting Surgeon General's report goes straight way to the Remembrancer of Legal affairs, so that a Bill may be drafted to carry out the Bombay Commissioner of Police's suggestions, and after some modifications a bill is launched and comes to us in its present state. I regret to say that I am totally opposed to the enactment of such a measure which is simply a species of political vivisection. And it seems to me useless to criticise the mere language of a Bill, when as I submit the very principle of it is unsound and unsafe. The two cases cited by the Commissioner of Police are against him, and they occurred at a place superintended by an accomplished and passed chemist. This Bill therefore, is, with submission, like giving a strong 40 grains doze of Quinine to a man who has had no fever, the result being the creation of a fever that may carry the patient off. Bills like this, I respectfully submit, unnecessarily alarm the community, and on that ground also ought not to be enacted in the manner proposed.

The Bengal Act to which reference is made is by no means faultless. If injurious drugs are sold, we have already a Law of poisons founded on the code of 1827, and there is nothing to show in this compilation which begins with the Police Commissioner's letter and substantially ends (so far as opinion evidence is concerned) with the report thereon by the Acting Surgeon General that either that law or the Act of 1866 which is now in force has led to any bad results. Any change in the Law of poisons should now form a part of our Municipal law like the Bengal Act of 1881.

(Sd.) V. N. MANDLIK.

The 14th January 1883.

THE LOCAL SELF-GOVERNMENT BILLS.

25th August 1883.

(Mr. Peile moves the first reading.)

The Honourable Rao Saheb V. N. Mandlik :—I divide my observations into two sections : first on the papers that have been published, and next on what has now been stated by the Honourable Member in charge of the Bills. I congratulate the Honourable Member in charge of these Bills on the advance he proposes to make beyond what could be discerned from the published statement of objects and reasons. I propose to make a few remarks on two portions of this Bill on this occasion, viz., the chapter on the constitution of the local boards, and that on the subject of control. The present is the first attempt to amend the law as laid down by Bombay Act III. of 1869, and to better the position of the local boards for the exercise of their responsible functions. Looked at in this light, the constitutional sections, with certain exceptions, make a concession in favour of the more or less general demand for popular representation. But I fear that this progress is somewhat neutralized by those sections which relate to control, and which will stifle the growth of a self-denying and self-working spirit on the part of the people of Western India. To use a homely illustration adapted from one of the classical English writers, it would be the making of a defence at one gate, and letting in the foe at the other. The essence of self-government, I take it, consists in the practical exercise of people's intellectual and moral energies in the free working of their own internal affairs, consistently with the general administration of the country in other official departments. A scheme to secure such a Government ought to be based on a maximum development of a popular administrative organization, with a minimum of pure official control. And it occurs to me that a great deal of the present arrangements, as suggested in this Bill, are probably due to a misapprehension of our position. To clear the matter more fully I shall therefore take a brief survey of the question as it seems to me to have been consistently treated by the Government of India for at least twenty-two years ; so that although this Council may now have

been asked to proceed upon the lines of the Government of India's Resolutions of 1881 and 1882, I venture to think that those Resolutions themselves are in reality describing, consolidating and amending the work of their predecessors. Thus it is said in the Statement of Objects and Reasons, para. 4:—"The administration of local funds under the above enactments and orders has been, upon the whole, highly successful. The time has, however, now come when, in harmony with the wishes and orders of His Excellency the Governor General in Council as to the extension of local self-government throughout India, the law regulating the constitution and the powers and duties of the local committees should be amended so as to secure to those bodies greater independence in administering the funds placed at their disposal for local purposes. It is for this purpose that the Bombay Local Boards Bill has been drawn." As regards the first part of this statement, I rejoice to see a recognition of the people's labors under difficulties, because, as I hope to show further on, all our local bodies have been too closely fettered by the rules and regulations made in pursuance of the Act of 1869; and their efforts to do their best are, therefore, a pursuit after success under difficulties. Whether their trials will now be reduced or increased will be seen further on. The second statement in the above paragraph is also one which, standing as it does, does not, I apprehend correctly represent our position and that of the Government of India, as it has dealt with us in matters of local self-government or local control. Much misapprehension has been already caused by a confusion of ideas on this subject. It is supposed that, in 1883, the Government of India and the Government of Bombay are now to be called upon suddenly to lift up their subjects from an unfathomable abyss and place them on the pinnacles of local self-government. However fascinating the idea, its mere statement must, in the view of all practical politicians, carry its condemnation on the very face of it. Equally unfounded is the reasoning of those who assume the unfitness of the people for self-government in the limited form in which it is now to be developed. Those who assume such incapacity on the part of the people betray, it seems to me, a complete ignorance of the past history of India in general, and of Western and Southern India in particular. I am prepared to admit that the disuse of particular powers of mind or body may cause a partial

atrophy of that portion of the organization ; but under careful tending I feel quite sure that there is more ground for hope and less for despair in that direction. Students of history know of nations, as of individuals, that it is by the constant application and exercise of the human faculties in the administration of affairs that their moral growth is strengthened and accelerated. Readers of current literature may be referred to an excellent paper by an Italian senator and a nobleman in the last May number of the *Fortnightly Review* which furnishes an apt illustration as regards the modern kingdom of Italy and the best Italians. While, therefore, I am prepared to meet with failures, I do not despond either as to the quality of the material or to the propriety of working with it in furthering the advance of local self-government. I shall now return to the history of this question as treated by Government. Thus, soon after the creation of the Legislative Councils of the minor Presidencies and the Lower Provinces of Bengal, the Honourable Mr. Laing, the financial Member of the Viceroy's Council, in his statement for 1861-62, spoke of this subject as follows:—"As regards public works, it was intended that £500,000 should be transferred to local budgets, and provided for by local taxation. This intention has not been carried out for a very obvious reason, *viz.*, that new constitutions having been given to the three Presidencies, it would have been manifestly improper to anticipate the action of the local Legislative Councils in a matter which is so peculiarly their province." Again, says he, "I am as strongly as ever in favour of the principle of local taxation for local objects. In fact, if this great Empire is ever to have the roads, the schools, the local police, and other instruments of civilization which a furnishing country ought to possess, it is simply impossible that the Imperial Government can find either the money or the management. The mere repair of the roads, where anything like a sufficiency of good roads has been made, is a matter altogether beyond the reach of any central *bureau*. It is of the first importance to break through the habit of keeping everything in dependence on Calcutta, and to teach people not to look to the Government for things which they can do far better themselves." The above passage is quoted and affirmed in an important Resolution of the Government of India in 1864. [See the *Gazzetle of India Extraordinary* on Municipal Police, September 14, 1864 Circular letter No. 2246, dated

31st August, 1864] from the Secretary to the Government of India, Financial Department, to all local Governments and Administrations; forwarding a Resolution of the Government of India in the Financial Department No. 2245 of the same date.] This Resolution reviews the history of the *mohtarfa* and other like taxes in India, and runs thus:—"One of the advantages of this mode of providing for the police of town is that it renders necessary the creation of a municipality and a municipal fund; and that although the application of the municipal fund is obligatory to the extent of the cost of the police, beyond that limit its appropriation to conservancy improvement, education, &c., is at the discretion of the municipal authorities. Great public benefit is to be expected from the firm establishment of a system of municipal administration in India. Neither the Central Government nor the local Governments are capable of providing either the funds or the executive agency for making the improvements of various kinds, in all the cities and towns of India, which are demanded by the rapidly developing wealth of the country. The imperial revenue barely suffices for the increasing demands upon it for objects of general interest; and the practical alternative is a large addition to Imperial taxation, in order to meet the wants of the town populations under a centralized system, or a transfer both of the duty and the charge to those populations. Not only will the local requirements be more promptly and fully provided for under the municipal system than they could be by any Government agency, but when the people see that they have the management of their own affairs in their own hands, they will feel confidence to do things which they would not have accepted from the Government. The appointment of wardens by popular election in the south of India has already introduced a new feeling of liberality into the administration of the religious endowments. Where the field is open, the more advanced members of the community naturally take the lead. The people of this country are perfectly capable of administering their own local affairs. The municipal feeling is deeply rooted in them. The village communities, each of which is a little republic, are the most abiding of Indian institutions. They maintained the framework of society while successive swarms of invaders swept over the country. In the cities, also, the people cluster in their wards, trade guilds, and

Panchayats, and show much capacity for corporate action. In making the more important improvements they will have the aid of many intelligent Europeans who are settled at the principal places of trade in the interior. If an improved municipal administration were not required for police, it would soon be wanted as a basis for the more enlarged and effectual measures of conservancy called for by the present state of public opinion. The government is totally incapable of furnishing either the funds or the executive agency necessary for such purposes in all the cities and towns throughout the wide realm of British India. Holding the position we do in India, every view of duty and policy should induce us to leave as much as possible of the business of the country to be done by the people by means of funds raised by themselves and to confine ourselves to doing those things which must be done by the Government, and to influencing and directing, in a general way, all the movement of the social machine. This policy has been shown to be in accordance with that of Lord W. Bentinck's and Lord Auckland's Governments Lord Canning's Government attempted to give practical effect to it, by transfering the charge for roads and other local public works, to the extent of £500,000 per annum, from the Imperial Budget to Local Budgets. Reasons for this are given in detail in Mr. Laing's Financial Statement for 1861-62; and in his Statement for 1862-63 he explained why the arrangement had not taken effect. No body whether official or non-official, could have written more strongly than those who framed the above. And who were they? The Viceroy, Sir John (afterwards Lord) Lawrence, Members of Council, the Honourable Sir Robert (afterwards Lord) Napier of Magdala, the Honourable H. B. Harrington, the Honourable H. S. Maine, the Honourable Sir Charles Trevelyan, and the Honourable W. Grey. I think the above names are sufficient guarantee that the whole scheme was thoroughly discussed and well thought out. It was, one may say, the continuation of a policy of widening the foundations of British rule in India, by entrusting to the people, as far as possible, the management of their own internal municipal affairs. The above resolution, from which I have already quoted several paragraphs, concludes thus:—"The policy of the measures now proposed is identical with that of 1861-62; but the principle of local self-government is more easily applicable to populations collected in towns

than to those which are scattered over the country ; and, in fact municipal administration has already made considerable progress in India." Next, in chronological order, comes our Bill for local funds taxation passed as Bombay Act III., 1869. When the Bill was before the Council, Mr. (now Sir) Barrow Ellis, after giving a short history of the origin of the enactment, stated that that Act itself was rendered necessary "by the spirit of opposition" or "of independence" ; that is, according to his showing, because people declined to pay a rupee more than they were compelled to pay by law. But he said that one of the principal features of the Bill then before the Council was the formation of local committees, so that the people might become accustomed to take an interest in the administration of their own affairs, and give that assistance of which the Government stood so much in need in regulating and providing for local requirements and improvements. Another object was that people, should be made to pay for new benefits which were to be conferred and which, but for the payment, they would not receive at all. The two objects then placed before the Legislature as those attainable by the employment of this new agency were public works and education. When the Bill was finally passed, Sir Barrow Ellis said that the taluka committees would be recognized by rules to be made after the passing of the Act ; but that the appropriation and distribution of the funds was to be made by the district committees. Although a definite fund was thus raised, the scheme of local boards did not make its proper mark in the country's history until the policy to which it owed its next advance was definitively emphasized by the Government of Lord Mayo in 1871. In that year the declarations of Mr. Laing in 1861-62 as to the local budgets and local self-help and self-guidance were re-affirmed at a meeting of the Council held on 18th March 1871. At the next meeting of that body the Lieutenant-Governor of the North West Provinces spoke as follows :—"And why, my Lord, should there not be a local Legislative Council also ? We have all the elements for it here. Besides official members, there are many independent native gentlemen well fitted to aid in such a Council. It is true that, compared with the Presidency towns, the non-official European element is small ; but even from these, worthy representatives might, no doubt, be found."

His Excellency the President:—The Honourable Member is reading an extract regarding a representative Legislative Council. Is not that rather straying from the point? There is no question relating to a representative Legislative Council before us. I think that is going rather beyond the scope of the measures under consideration; and our discussion may be amplified indefinitely unless we keep strictly to the matter in hand.

The Honourable Rao Saheb:—With submission, I do not wish to raise any outside question for a single minute. In the papers from Bombay which have been submitted to this Government and to the Viceroy it has been stated that we are ahead of the rest of India in all these matters; and from the Bills which have been, or are now being published in the *Gazette of India*, it seems that we are being placed behind such provinces as the Lieutenant-Governor speaks of here as ready for local self-government. The reason why I read these extracts is to show that these parts of India were considered at that period (twelve years ago) to be so advanced; and if we are now more advanced in this Presidency than these parts were at that time, we may perhaps hope that when these Bills are placed before the Select Committees they will find that they can give us a larger and more liberal scheme of local self-government than is proposed.

His Excellency the President:—I deprecate the introduction of any discussion of the possibility of having representative Legislative Councils.

The Honourable Rao Saheb having disclaimed any idea of entering upon such a discussion, continued as follows:—Lord Mayo replied in the following terms:—"I will only add one word more, and that is to express my great satisfaction at the opinions enunciated by the Lieutenant-Governor in regard to local committees; that is to say, with regard to the assistance they may receive from the natives of the country as to the management of their affairs. I had the satisfaction of mentioning the other day how the Lieutenant-Governor of a neighbouring province had pushed on that good work. I believe the Lieutenant-Governor of the North-West has done no less than Sir Donald McLeod in this respect; and I believe that no man can devote his time or his labour to a work that will be so certain to effect a more immediate result than the development of those institu-

tions which have always, and in every country, formed the germ of good government." Since the above date our administration Reports and the reports showing the moral and material progress of India bear witness to the silent and steady working of our machinery as far as the springs which set it in motion have left it room to move and work. Thus, wherever our Collector-presidents availed themselves of the people's assistance, that has not been withheld. Where the people have been sat upon, they have done nothing, for the very best reason that they could do nothing. When in 1875, the Government imposed the seven years' budget system in the administration of local Funds, the very nominal existence of the taluka committees was brought to an end. People saw the fruits of their local rates carried off to open up Imperial communications, to build provincial and interprovincial roads, and to waste local resources on comparatively non-local projects. Thus, in the Blue Book on the Moral and Material Progress of India for 1871-72 occurs the following statement:—" The general habit of self-government is thus being gradually diffused throughout India. In some parts its development is more rapid and complete than in others; but everywhere it is beginning to have an effect upon the people. The privilege of electing their own managers of their local affairs from among their neighbours has been extended, in several instances, to the inhabitants of large towns in the North-West Provinces and in Sind. There is a provision in the Madras Act with the same object, but it does not appear to what extent it has been put into operation. In the Punjab the privilege of election has been very sparingly applied. But where there is no election, there is local government through *Panchayats* or boards composed of the inhabitants, so that throughout India the habit of self-government engendered by municipal institution may be expected in course of time to have a marked effect on the inhabitants of towns, and through them on the mass of the people. The levy of rates for local purposes is quite in accordance with ancient usages. These town dues were called *chunghy* or 'handful,' implying that all merchandize that passed had to pay a small contribution." I shall not trouble the Council with statements for subsequent years, as they will have to be drawn upon more copiously on another occasion, and because I have not seen the above description to have been changed, so far as the

capacity of the people is concerned, in subsequent years. How, then, has the aforesaid system been actually worked in this Presidency? For this I must draw on another source of information, viz., an official compilation, Part II., Appendix, being copies of, or extracts from, correspondence between the Secretary of State for India in Council, the Government of India, and the various local Governments, on the proposed measures for the extension of local government in India, published by order of the House of Commons in March 1883. Looking at the reports of the local officers, a curious admixture of assertions and theories is observable, mixed up with some valuable reports. Thus the Commissioner in Sind observes that there are many intelligent men, who only want encouragement to take an active part in the management of affairs of their native place. But he says that under the system introduced by Government, by which the seven-years' forecast of expenditure is to be proposed at one time, there is little left for taluka committees to do. Again, he says that the management of municipalities and also of direct local funds is far too much in the hands of officials; and, as public institutions, they are, with the exception of some city municipalities, little better than shams. (Pages 16-17). Coming lower down, the Collector of Ahmedabad holds that there are people in some parts of the Presidency capable of giving valuable advice. He thinks that their association with public officers is likely to attract public co-operation in the furtherance of the interests entrusted to them. (Page 3). The Collector of Surat (page 9) holds that it is hopeless to expect any people to put themselves to trouble in reference to educational matters upon the present terms; and he considers that not an atom of real power is conferred on the committees, and hence they seldom go near the schools, except under some official pressure. He holds that it would be essential to the success of this attempt that there should be no half confidence." The committees should be treated as administrators, with a certain assignment of local revenue and, strictly but fairly treated. Coming lower down, the Collector of Kolaba (page 6) quotes instances of the ill effects of not consulting the people of the country on questions affecting the expenditure of large sums of public money, and cites examples of the two parts of Waghotana in Southern Konkan and Karwar in North Kanara, both of which examples have become proverbial among the community for the waste

of money they have occasioned. How the system of over-control has stifled public spirit may be further learned from examples with which this compilation abounds. The Collector of Nasik says as to loca funds: "I am respectfully of opinion that more power might well be left with the direct local fund committees. They may approve the budget, and may be quite unanimous as to the real wants of the districts. But the ultimate disposal lies in higher hands, and the local bodies have simply to obey orders and submit." When making some further remarks he says that "if real power be given to these committees they will become in reality district road boards, analogous to those existing in England and Scotland, responsible for the due maintenance of the roads and the prsper expenditure of money entrusted to them." So that after all what is wanted is conferring more power upon the people (page 26). The Collector of Satara (page 33) says that these "committees are merely allowed to sanction a certain statement of expenditure that is put before them every year. Everything is cut and dried before it comes to them, and they have nothing to do but to acquiesce." Again, he says we had five-years' budget, and now we all have seven-years' budget. "The committees have no power to even remonstrate; that matter is settled before opinion is asked for." The taluka committees have literally nothing to do, says the Collector, and the district committee is little better. This officer, however, appears to be inconsistent in his own statement. After stating the above, he says he wants no extension of power for these bodies, which have not yet shown what they can do. Who prevented their exercise of power, and why that was prevented, is a matter which, like other unpleasant things, this gentleman will not stop to analyse. One of his assistants (Mr. Lee-Warner) considers that the Government of India are now embarking on a distinct experiment, and he considers that "if the object of Government is correctly stated, it is essential that the fact should be grasped that an entire change of attitude on the part of the Government of Bombay towards these local bodies in Satara should be adopted. He then shows how the taluka committees and villages have been stifled in favour of large schemes, and how local works of utility are laid aside. In regard to the suggestions invited by the Government of India in order to ensure better local self government, he holds (p. 35)—"It is essential that the independence of municipal institutions should be

fostered, and their powers guarded against arbitrary interference, even when gilded with the name of reform. The taluka local fund committees must be rescued from destruction by really entrusting to them some definite responsibility, and some regular share (no matter how small) of the district local revenue. I have no hesitation in saying that the Assistant Collectors of Satara have all of them, for some years past, allowed the privileges of taluka committees to lapse, to the great injury of local self-government and I trust that the Resolution of the Government of India will force this subject upon the attention of Government. I do not think that fresh legislation is required. The present law is amply sufficient, if its provisions are duly enforced." The Collector of Khandesh, evidently writing from the recesses of his charge, is surprised at the tremendous character of the changes proposed by the Government of India. His idea evidently is that persons in official positions know more about the people of India than any other class, including, I suppose, the natives themselves. I do not stop to criticize the opinion of particular individuals in this compilation, for there is no time; but the following views meet the eye under different garbs in various places, and from the official position of the parties they may do mischief. The Collector holds—"the Government of India, in paragraph 6 of the Resolution, lays great stress upon the fact that as education advances there is rapidly growing up all over the country an intelligent class of public-spirited men, whom it is not only bad policy, but sheer waste of power, to fail to utilize. Such men however, I confidently assert, have as yet not shed the light over our purely agriculturial districts. The last thing an educated native thinks of, or takes to, is farming or agriculture. He first tries for employment under Government, and if he fails in obtaining a place, he becomes a vakil, mukhtyar, or clerk, and seeks employment in our large cities. He does not cultivate, nor does he settle down in rural districts; and for this reason I say that it will be very difficult to secure the services of educated and public-spirited men on the proposed sub-local boards; in fact, the class of men particularly referred to by the Government of India is just the very one we shall fail to find." If the Collector had thought a little, he would have found the reply. Leaving Khandesh and coming down to the Southern Konkan, the Acting Collector of Ratnagiri distinct-

ly says—"To enlist the interest of members we must make them largely independent of the officials. If they find themselves dummies, as they largely are at present, the whole thing will fail." An Assistant Collector of this district says (p. 79) of the taluka committees as follows :—"All the work that there is, is done by the mamlatdar, the other members rarely doing more than suggest some petty scheme for the advantage of their own particular villages. And, lastly, the committee has at present no authority to do anything. In fact, after recommending works for execution for several years and finding them still unsanctioned, the Assistant Collector is often positively ashamed to call the members together." And again :—"In the constitution of municipal committees a greater difficulty presents itself. The best men are often not willing to undertake the duties. At present the municipal committee does not at all represent the population of the town. The chief cause of this is, no doubt, as stated by the Government of India, that the best men have no sufficient inducement to give up time and attention to the transaction of public business. It is not unlikely that if we can make it fully understood that 'real power is placed in their hands, and that they have real responsibilities to discharge,' the best men may be willing to come forward." This is the key to the whole secret. So long as official dictation does not cramp the energies of the people they are ready to progress according to their lights. Not that there, will be no failures, some failures must occur, but there must be the real power in the hands of the people to manage their own affairs. In 1876, says the Collector of Belgaum, the Government of Bombay laid down the following principle in one of their Resolutions (p. 74):—"It is the fixed policy of Government that the local wants of the people should be attended to, in the expenditure of the one-anna cess, before projects for the general development of the resources of the country, such as long roads, are taken in hand." Yes he shows that two great provincial roads were recently sanctioned, for which Belgaum local funds had to contribute more than five lakhs of rupees. Therefore he correctly represents that, under such administration, local self-government cannot at present be more than nominal. Again he says :—"I doubt if I have made a single camp without hearing the universal cry for wells and repairs to tanks." and yet under this system he has not been able to

meet their wants. This Collector holds that initiation of all expenditure should rest solely with the local boards. In a previous part of his report he says in his letter to the Commissioner:—"I observe that in your letter No. 1254 of the 3rd April last, you reported to Government that the collectors and presidents of district local funds and municipal committees might be said to be unanimously opposed to any present extension of existing self-government in respect of local funds and municipalities. I would, however, submit that this does not altogether represent my views. I have not by me, as I write, the letter which I addressed to you on the subject; but I remember that the general purport of it was that, as regards local-fund administration, it was so official that local self government in this branch could not be said to have an existence, and was not, therefore, open to extension. With the utmost respect I would here add, in allusion to your remark, that 'we are, in fact, in this Presidency already far in advance of most other parts of India'; that, whatever may be done in other provinces, we are, though in possession of a good law for local-fund administration by local boards, as backward in practice as though neither boards nor cess-payers had a voice in the matter. For all practical purposes the representatives of the cess-payers are non-existent; and the whole administration of the funds devolves on the officials who meet at the district committees, and who have to carry out any orders that Government may be pleased to pass respecting the assignment of funds towards certain objects or for the advancement of schemes which Government have directed shall be considered with a view to their being carried out. Practically, the Commissioner of the Division has been given by Government the entire control of the local funds. The 'control and general supervision' over the proceedings of the district committee, which is by Bombay Act III. of 1869 given to the Commissioner, has been, by Government Resolution No. 341 A-588 of the 23rd December, 1873, interpreted so as to compel committee 'to omit, or to insert, any particular work or item of expenditure,' as they may be instructed by the Commissioner. The committee have certainly a right to appeal to Government, but if the Commissioner should be acting in accordance with the expressed views of Government in insisting on funds being provided for particular projects, an appeal to

Government would exhibit the president of the committee, who is the Collector of the district, in opposition to the Commissioners and to Government, who expect him to carry their views through the committee." Again (25), "the local-fund budget, Rule 3, lays down that the local-fund committee shall initiate all expenditure from local funds;" but this sole right of initiation of expenditure is completely nullified by the above-mentioned Resolution, which obliges the committee to "insert any particular work or item of expenditure which may be initiated by the Commissioner. The above extracts not only give the history of the working of the local funds, but also supply an answer to the sceptics of our aptitude for self-government. Those who say we are yet to have a trial in the matter, appear to forget that they are speaking, not of Kaffiristan or the country of the Hottentots, but of the inhabitants of a country with a long history reaching even beyond hoary antiquity, with definite forms of government, with an extensive and varied literature, and with comprehensive systems of philosophy and ethics, of religion and morals, of a large body of natural science, of mathematics up to astronomy, of architecture and engineering as evidenced by splendid public works and monuments, and of the fine arts. Elective government was not only not unknown, but so late as the 14th century a large tract of country on the coast in Western India was actually governed by a council of four senators with a president elected by the peop'e every three years. Circumstances had occurred to interfere with the progress of this ancient people, and the happy advent of British power has providentially supplied a lever (in comparison to which no physical measures would have been of any avail) to act on this mass. But even under such auspices we must have a hard continual training. Are we likely to receive it under the present Bill? I do not agree with those bodies who take a too sanguine view of the situation. There is no royal road to self-government any more than to any other species of government; it must be established firmly, and worked patiently and perseveringly. From the days of the Delphic oracle in Greece, or of the Aryan sages in the tract between the Ganges and the Jumna, the problem of self-Government has always been the most difficult one, and no people has worked at it so hard and in such various shapes as the Aryans of India. I use the

term in an illustrative and extensive sense, for notwithstanding several expressions to the contrary that are to be found here and there in reports presented to the British Parliament, even the Mahomedans of India are not that fanatic class which they have often been represented to be, but from several able works I have received from Northern India they are able and prepared to co-operate with other sections of the community. But it requires regular continuous work, continuous even as the working of natural forces in the universe. Can it be said that there is no evidence before us which would support us in asking that we should be tried by a more liberal measure than that we have now before us? This is a local question in one sense, but a great national question in another sense. It is local inasmuch as the Bills before us are limited to the Bombay Presidency. But it is national in so far as their effects will bear largely on our sister Presidencies in India. I do not, therefore, rest, on evidence in reference to Bombay alone, which I have quoted above; for even the worst reports in Bombay admit that we are much in advance of the rest of India. Our Bill quotes provisions from the laws of some backward provinces—I say it without offence. It quotes several provisions of the Central Provinces Bill. Now, while the Central Provinces' local funds only date from 1881, and their mukadams, as they are termed, are a recent creation, while our hereditary classes, such as desais, nadgowdas, deshmukhs, naiks, patels, &c., &c., are older even than the last Maratha Government, which existed for more than one hundred and fifty years, and older even than some of the Mahomedan Governments which preceded it. Now, then, again coming to the provisions of the Bills now placed before us, the Government of Madras are prepared to affirm that the president ought not to be, as a rule, official. In the North-Western Provinces (although the Bill has not yet been passed) the boards are left to elect their own presidents, and the number of non-officials on those boards is "not exceeding three-fourths." Speaking, therefore, in regard to local boards elsewhere, and on the authority of many of our well-informed local officials, I think it is a question whether the presidents ought to be Government officials at all, and I concur with my honourable friend, Mr. Budrudin, in saying that if freedom of action in such matters as the working of the local

boards is to be at all evoked, and the people educated to a sense of their duties, it would certainly be advisable that the proposal to appoint high officials in their own districts as Collector-presidents ought to be abandoned. This will be necessary if the experiment is to succeed. And if there are local areas which are considered too backward for the introduction of the scheme of local self-government, as perhaps the Thar and Parkar, or the Eastern Nara in Sindh or the districts near the north-eastern borders of Sind or the Panch Mahals in Guzerat, or may be certain outlying talukas of Kaladgi, they might be scheduled, and power reserved to the local Government to extend the measures to such provinces whenever it may appear advisable to do so. In that respect the Council would have the example of certainly two of the local Government Acts in Great Britain. We have been told, in reference to the municipalities in particular, that Government have already extended the power of a popular constitution to certain municipalities. I have no doubt that the evidence before the Government fully warranted their taking such steps, and they are to be thanked for what has been done. But I cannot allow this to reconcile me to the next step, and that is the levelling down of the city municipalities to the status of town municipalities, rather than lifting up the latter bodies to the position of city municipalities. I cannot understand the logic of the signatories to one document which appears on to-day's statement of the papers laid on the table. I have not read it closely yet, but a cursory perusal shows that the Sarvajanik Sabha of Poona are of opinion that a great extension of privileges has been accorded by these Bills. I trust they will have read the Bills of other presidencies dealing with similar matters when they again address the Council. Certainly, the Bill for the North-West Provinces is much more liberal on the point of constitution of the local boards; and our own Act of 1873 was much more liberal in regard to the elective members of city municipalities. If cutting down the numbers of elective members from two-thirds to one-half is liberalizing the constitution of city municipalities, then I am wrong; but I cannot take it that such is the case, nor can I take it that it can be said that our local-fund boards are also much more liberally constituted when compared with such a backward part of

India as the North-West Provinces. As I said before, the presidents there are chosen by the boards ; and I see no reason why the same provision should not be inserted in this Bill. Turning next to the sections of control, it is said in the Statement of Objects and Reasons that in the matter of control we are proceeding on the analogy of the English Public Health Act. The original English Public Health Act, I take it, is here referred to, namely, the Act of 1848. That is the main Health Act ; and Section 121 of that Act defines the control of managing inspectors to carry out certain provisions of the law as laid down. In the case of the Municipality of Bombay we have two sections which used to be called the " bludgeon clauses" of the Act—Sections 40 and 41—by which certain powers of control were reserved to the local Government, and distinctly defined as "the procedure of Government upon complaint of default in carrying out this Act." The Council will remember that the Municipal Act of Bombay is a much more complecated piece of legislation, confers very much larger powers on the Municipality, provides for the sanitation and various other wants of a community as large as perhaps the second city in the British dominions—its population being nearly 800,000—and yet this Section 40 defines the subject of control as belonging to the enforcement of the provisions of certain sections which are distinctly laid down. In our Act we no doubt proceed upon the basis of the Resolution of the Government of India of May, 1882, but the Government of India do not say what particular subjects are there indicated in the 2nd section of para 17 of their Resolution ; and although certain powers must be reserved to the Government, whether in England or out here, I submit that those powers, under an Act like this, ought to be distinctly defined. If they are not defined, the Act itself ought to be only introduced in those municipalities in particular which are supposed to be advanced to the rank of city municipalities able to manage their own affairs. A municipality, unless it works out its own scheme of government, is, I submit, a misnomer. It has no more right to arrogate to itself the title of a municipality than a village panch, or the kulkarni, or patels, who are not very powerful personages, as far as I can see. The Collector of Shikarpur truly represents the character of many of these people, who will do almost anything to please the

authorities. Then, again, the Local Government Board in England is one of the departments of the State which was formerly represented by a Secretary of State, but which is now represented by the president of the Local Government Board. That Minister has to render an account annually to the British Parliament, and from the proceedings which come out to this country, in common with all parts of the British Empire, we know how very jealous a control is really exercised over the very smallest instance of improper or illegal working of all such acts in Great Britain. But are we justified, on the analogy of the English Public Health Act, in insisting on such indefinite provisions as are included in this chapter of control in reference to such backward places as these Bills have reference to? The Scheme of local government for towns and cities in Great Britain was enlarged by the Act of 1858, and by another Act in 1872, which, again, has been amended as far as I have been able to discover, certainly not in the direction indicated in these Bills. The character of the business which has to be dealt with by the municipalities and local boards in England is necessarily complicated; but is it the same here? How artificial the legislation there has become, is familiar to all the legal members of this Council and to the Honourable Member in charge of the Bill better than most of us. I will only quote a few of the heads of some of the Acts which come under the cognizance of the Local Board. There are the Labouring Classes' Lodging-houses Acts, the Labouring Classes' Dwelling-houses Acts, Artisans' and Labourers' Dwellings Acts, Baking-house Acts, Bath and Washing-houses Acts, Nuisances Removal Acts, Sewage Utilization Acts, and a great variety of Acts in reference to sanitation, burial and other matters. If the power of the English Local Government Board, centralized as it is, and amenable to such checks as exist in England, is clearly defined by law and made applicable to specific objects, it is surely necessary here that in order that we may proceed upon some common admitted principle which must alike govern the development of man in all varieties and in all climates, we must reserve certain subjects from interference, subjects on which there can be no room for debate, and subjects which will not affect the internal peace or stability of any single department of the Empire outside these local boards. At resent what can the local boards have to do beyond repairing roads,

building, dharmshalas or serais, repairing tanks, and looking perhaps at schools or paying school-masters. Now, I submit that interference in the administration of these affairs either by the Collectors, or by the Commissioners, ought not to exist, or if it exists it ought to be so strictly defined that people may not complain that they have been simply sent from the frying-pan into the fire. The papers before Government, and which have been submitted to the House of Commons, contain abundant evidence of complaints from our own Collectors that there is really no free scope of action for the people. By all means let them be guided in the simple work that they have to perform, but let them not be so heavily weighted that their free motion itself may be endangered. Now, some of the provisions of these Bills not only provide for the interference of Collectors, but empower them to depute other officers to interfere. Then they can interfere with the employment of establishments, which I think cannot be correct. They can interfere with ordinary work. Now, unless some scope of action is left to these committees, I, for one, venture to think, seeing the example of Poona, which I have watched, I may say, since 1851, and Bombay, which I have known for at least twenty years, I do not think there will be much chance of indigenous improvement so marked as to compel itself on the attention of the local or of the Central Government, and enforce its will, or try to enforce it, against the will of the constituted authorities. I think any fear of their transgressing could safely be provided for by law, and where it cannot be so provided for, I would rather erect no municipality at all, and keep to merely semi-municipalities, which may be promoted to the rank of genuine municipalities when Government sees fit to grant them a certain measure of independence. In reference to rules, again, objection has been taken more than once in this Council that, except on questions of mere administrative detail, every question of principle ought to be debated here, and settled by this Council, which, as I take it, is only the highest department of Government, where its legislative will is stamped on the history and progress of the country by means of those Acts which it passes. There is another point which occurs to me. I trust the Select Committee will see their way to making some provisions in regard to publicity. In Great Britain, as I said before, the pre-ident of the Local Govern-

ment Board has to submit to the House of Commons an annual report of his administration. I think the best corrective to errors of commission and omission on the part of our local boards, as well as on the part of the municipalities, would be to insist on the publication of their proceedings, their submission regularly to Government, and their publication through the press. It may be that a portion of their revenues would be so spent; but I maintain that there is no check, or that there is hardly any check, in reference to the Mofussil bodies, which will be so effective as the regular publication of their proceedings. Anybody who felt aggrieved might then present his complaint in the proper quarter and seek to have his grievance redressed. There is one more subject which was commented upon by my friend, Mr. Budrudin, and to which I wish again to draw the attention of the Council—that is, in regard to the qualifications specified in the Bill. I must confess I do not like to go down all of a sudden, and bring the franchise to those who may not seem qualified, either by their educational claims or their social position, or by property qualification, to thoroughly realize their responsibility, for this is not a matter in which this Council ought to proceed lightly. And having defined certain large classes, if the lower classes then are not properly represented, sufficient scope is left in the nominative members—whose proportion, I trust, the Council may yet see their way to reduce—and out of these nominative members adequate representation for these classes may be found. But in reference to the individual qualifications, the rule, as at present drawn, seems to me to proceed upon no recognized principle. In Bengal the commission of a non-cognizable offence is made the ground for exclusion of a person from the franchise. If we do not like to accept that, the one which my learned friend, Mr. Budrudin, presents to the Council, of a distinction between a compoundable and a non-compoundable offence, might be taken. But what I would ask the Council to bear in mind is that the test of exclusion ought to depend upon some offence involving moral turpitude. Anything which does not involve moral turpitude ought not to deprive a man of the capacity for the performance of the duties of a citizen and a man. At present, even a man who in the heat of the moment might box his neighbour's ears and be sent by the police

patel for twenty-four hours to the lock-up, would be debarred. There is only one more suggestion that I have to make, namely, that I think these Bills, although from their size they may appear small measures, involve very great principles for evil or for good, and they ought to be placed before the public for a sufficiently long time, and should be considered by the Select Committee with very great deliberation, and also at sufficient intervals to allow of their being most fully and thoroughly discussed. With these remarks I shall have very great pleasure in assenting to the first reading of the Bills.

THE LOCAL BOARDS BILL NO. 3 OF 1883.

9th January 1884.

(Mr. Peile moves the second reading.)

The Honourable Rao Saheb V. N. Mandlik :—I was appointed a member of the Select Committee which sat upon this Bill the last time the Council met in Poona. The first meeting of the Select Committee was appointed to be held at Mahabaleshvar, (20th October). But the time fixed for the meeting was within a few days of a sitting of the Criminal Appeal Court, and, therefore, I am sorry I was unable to be in my place and take part in the deliberations of the meeting. The Honourable member in charge of the Bill has replied on this occasion to several observations which I made when the Bill was last before the Council. I have not brought with me the papers upon which my observations made in August last were based ; but I am prepared to take the Bill, as it has now come from the Select Comittee, making whatever remarks I have now to offer very briefly. First of all, on the question of the constitution of the Local Boards, I think it would be well to follow the honourable member in reference to the authorities on which he has now relied. I have now before me the number of the Poona Sarvajanik Sabha's journal for January 1884, which I received two days ago, and this is what it says : "We need hardly say that we agree with much that the Select Committee has said in the preliminary portion of its report on the Bombay Local Boards Bill regarding the constitution portion of the two Bills, because the readers of the *Quarterly Journal* are already familiar with our views on the subject. But there are three points in the constitution portion of the two Bills wherein we do not agree with the Select Committee at all. These points relate, *firstly*, to the elective minimum in the District Local Boards ; *secondly* to the absence of an express provision in the body of the law that salaried servants of Government shall not be eligible as Vice-Presidents of Local Boards and Municipalities, and to the absence of an equally express provision by which the position of the elected Vice-President can be assured instead of being made dependent, as it is now proposed, on the mere sweet will and pleasure of the official president ; and, *thirdly*, to the

absence of an express position in the body of the Municipal law that Municipalities fulfilling certain well-defined tests shall have the right of electing their own president. In all these three respects the Bills have been left very defective so far as their constitution portion is concerned. And our surprise at this omission is all the greater because, so far as one can judge from the opening speech of the Honourable Mover about the intention of Government, their views remarkably correspond with our own, as has been already shown in the previous number." I shall not follow the views of the writer in all respects, and I may say that I am quite at one with the honourable member in charge of the Bill that inconsiderate or precipitate legislation would produce no good whatever. I have expressly said so on the last occasion, observing that in an experimental measure of this kind the advance must be cautious and gradual, or the legislation must end in failure. But I fail to see in the Bill before us that there is such definite power or financial independence given to the local boards as may afford room to expect that any certain progress will be achieved in future years. I hope it may prove that my view of the situation is somewhat too gloomy ; but judging from the history of Bombay and its Municipality, I am of opinion that unless a defined financial independence, to a certain extent, is guaranteed to the local boards, it is idle to expect that they will take any sustained interest in the working of the constitution. In connection with the promulgation of the rules upon which I dwelt on the last occasion, I must say that the very despatch of the Government of Bengal upon which the honourable member has laid stress, lay down the conditions under which control may very effectively be exercised, without much interference. The English Health Acts, to which reference was made, also define the circumstances in which such control may be exercised. But it may be noted that these Acts, framed as they are for an advanced country like England, contain provisions whereby towns and cities may, under certain conditions, be withdrawn from their operation. In reference to the question of appointing non-official presidents, I may give here one or two instances, though I do not know whether the gentlemen whom I will mention will thank me for bringing their names prominently to the notice of the public. But, at all events, their names have been brought to the notice of Government, who have thanked them for the satisfactory administration of Muni-

cipal affairs. For example, Mr. Narayenrao Wad, as Chairman of the Nasik Municipality, has most successfully administered the affairs of that large municipality, and I have no doubt other men of the same stamp may be found who would be able to give like satisfaction, if they only had the opportunity. Whenever there are sins of omission or commission, it is only proper that they should be effectively checked, but I think that the very statement of the Bombay Branch of the East India Association to which the Honourable Mr. Peile referred in his speech, points out the direction in which people look forward to some enlargement of the Municipal functions. As to the progressive nature of the Bill, I may say that the papers relating to it have been only just coming in from England in driblets. A part of the correspondence was received during the last October vacation, and although I cannot say that I am able to spare as much time to a consideration of this subject as I must of necessity devote to my professional duties, both Government and private, still after having given to this work a reasonable portion of my time, I have come to the conclusion that we are proceeding with these Bills somewhat too precipitately, to use the honourable member's own expression. I believe we ought to be given more time, and though the Select Committee has worked admirably, so far as the materials before them went, here are these additional papers which show that there is yet room for greater deliberation and less precipitate action.

* * *

The Honourable Rao Saheb Mandlik:—Under the constitution, there may be a hundred villages in a taluka, but only one of the holders of these villages can get into the board, while the others are disqualified. When it was proposed to introduce qualifications based upon education, it was urged by the Honourable Mover that it was desirable to give the elective franchise only to those who have a permanent interest in the local funds. Now, the holders of alienated villages contribute their share to these funds, and if the argument employed by the Honourable Member were pushed to its logical conclusion, there is no reason why the Inamdars should be proscribed as a class from the benefit of the Act. I move that in section 10, clause 1, the words "other than entire alienated villages" be omitted.

The Honourable Mr. Peile :—The object was to give this class their proper amount of influence in the boards, and not too much.

The amendment was carried.

* * * *

The Honourable Rao Saheb Mandlik:—I propose to add after the words "Honorary Magistrates" the words "and Fellows of the University of Bombay." I may say that this class of people will be very useful as members of the rural boards. In the history of the Bombay Municipality, there is the notable example of Mr. Curry, who was elected in virtue of his being a Fellow of the University and who as Chairman of the Town Council discharged his onerous duties to the entire satisfaction of everybody. We know some Honorary Magistrates who can with great propriety be elected members of these boards but not all. And it must be borne in mind that Fellows of the University are supposed to have passed through a double ordeal. They are appointed by Governme nt in the first instance; and their career is closely watched, and they are among the best qualified to be admitted to the right.

The Honourable Mr. Gonne:—I am of opinion that the distinction proposed to be granted is an artificial one. We might as well grant the franchise to a C. S. I., a C. I. E., or any other person having a ticketed distinction.

The amendment was lost.

* * * *

The Honourable Rao Saheb Mandlik:—I think that the provision in regard to the absence of a member for more than four consecutive months from the limit of his district should be made applicable to all, without distinction, whether they are salaried servants of Government or not. If a member of the Syndicate is absent for a certain space of time, his office becomes vacant. If any member of the Bombay Municipal Corporation is absent for more than three consecutive months, he loses is seat; and I see no reason why the same principle should not be adopted in the case of local boards.

His Excellency the President:—But this clause will chiefly apply to District Officers, whose duties will often take them for a long time beyond the limits of the district in which a board is established, and it would be very injudicious to deprive them of their seats for this reason.

The Honourable Rao Saheb Mandlik:—But here those members alone will lose their seats who will be absent for more than four con-

secutive months from the limits of the district. Now, I imagine tl at a District Officer will generally remain within his district.

His Excellency the President :—It is quite right that an official should lose his seat if he goes on leave for more than four months. But it would be very hard that he should be made to forfeit his office at the board, simply because his duties comple him to be absent for some months.

The Honourable Mr. Peile :—An Educatioual Inspector or a Sanitary Commissioner will have to go outside the limits of a district in the discharge of his duties, and it is not desirable that they should be therefore made to forfeit their office as members of the boards.

The Honourable Rao Saheb Mandlik :—Ordinarily all members of the board must be supposed to be within the limits of their district.

It was then resolved to omit the following words from section 11 clause (h):—"not being a salaried servant of Government."

The Honourable Rao Saheb Mandlik :—May I ask why we should exclude females from their right as voters, if they possess the necessary qualifications ? If we grant the franchise to women, it would simply be in accordance with the policy of admitting them to University examinations and degrees.

The Honourable Mr. Peile :—I think that in the Bombay Municipal Act women are not disqualified from voting.

The Honourable Rao Saheb Mandlik :—I believe that females were allowed to vote at the last municipal election. The matter was very warmly discussed at the Corporation, and it was the general opinion that women ought to be admitted to votes, if they were qualified.

His Excellency the President :—I suppose the Honourable Member has raised the question of the eligibility of woman for voting, and not for election ?

The Honourable Rao Saheb Mandlik :—No, your Excellency, not for election.

His Excellency the President :—Well, females have votes in Bombay. At the late city elections, they exercised this privilege,

and I was told that sixty per cent of them actually voted. I hope that they did as they were told.

The Honourable Mr. Ravenscroft :—Femals have votes in England, and I do not see why they should not have them here.

The section was amended by the omission of the words "female and no."

* * * *

The Honourable the Acting Advocate General :—I doubt whether in section 31, which relates to the conduct of business, it is advisable to provide that a quorum of members should be secured in the case of every meeting. I believe that in the case of the Bombay Municipality there is a provision in force, by which, if a quorum cannot be secured at one meeting, no quorum is necessary at the next. I think that it is only with the aid of this section that the business of the Bombay Municipal Corporation is got on with at all.

The Honourable Rao Saheb Mandlik :—There is a provision in the Bombay Municipal Act that if a meeting is adjourned for want of a quorum, no quorum is required at the next.

His Excellency the President :—It is very possible that there would be a difficulty in getting a quorum of one-third of the members at every meeting of the local boards.

The Honourable Rao Saheb Mandlik :—I would rather insist at least, so long as the boards are in their infancy, that there should be a quorum present at every meeting. If we omit the provision regarding a quorum from this Bill, I fear the entire work of a board will practically fall into the hands of one or two energetic members. I think that in Bombay it is rather on account of bad management that the Corporation has at times to adjourn without a quorum. I am of opinion that in a properly managed Municipality no quorum difficulty would arise from time to time.

The section was not altered.

THE DISTRICT MUNICIPAL BILL No. 4 OF 1883.

6th February 1884.

The Honourable Rao Saheb V. N. Mandlik :—Sir I have a few observations to make on the Bill as we have it now amended. With regard to those sections of the Bill which relate to what I may call the procedure in reference to our municipal law, I think that the amendments that have been made in the Select Committee are, with few exceptions, such as will meet with the approbation of the Council. But in regard to the constitution, I am sorry to see that you are not going upon any definite principle beyond what the Council has done with reference to the last Bill. As I understood the matter in reference to local boards, it was said that the progress of the people in the different parts of the Presidency and especially in the outlyig districts, had necessarily not been uniform; and it was expected that this Council should accept tentatively a law like the Local Boards Act. But I must say in regard to municipalities that we have had much larger experience of the working of municipalities, extending over, in some cases, more than thirty years ; and from the reports received from several districts it seems to me that the Council might have safely classified the municipalities, at least experimentally, and have given certain definite status to one or more large municipalities in the Presidency. I think the experience of Bombay, so far as it has gone, is a guarantee that the same measure might be extended, with such safeguards, such additional checks—as this Council thought proper to impose, at least to one or more places in each division. I received only two days ago a paper from the Secretary of the Committee of the Poona Municipality stating the leading points of complaint in reference to the present Bill in this way :—

> " 1. The constitution of the bodies must be based on more liberal principles. 2. That the bodies must be classified according to population and revenue and intelligence. 3. That the presidents of first class bodies should be elected, those of the second class appointed non-officials. 4. That the powers of the vice-president should be defined by the

Act. 5. That the financial independence should be guaranteed. 6. That Government should publish all rules made under the Act before finally passing them. 7. That the sections relating to conduct of business should be more precise."

I must say that I cannot agree with all that appears there. I think that as regards the rules of the conduct of business, they must be settled in the same manner as they are settled at our Corporation here, and only made law with the sanction of the Government. But in reference to the other recommendations, I think the advance in the substantive portion of the municipal law is not very perceptible. I bear in mind what the Hononourable Mr. Peile said with regard to the wishes of the Government of India as enunciated in the Resolution of the 8th of May 1883. They are, even in Bengal, giving much larger definite substantive powers to certain large municipalities. I see no reason from the reports submitted to Government why we should not be more liberal. But looking at our Bill, we can hardly say that in regard to municipalities we have made larger advances in municipal administration. Why is more power withheld? I think that the progress that has been made in the new Act is an augury for future progress. But I do not see any reason why some provisions might not be inserted in this very Bill, if it so pleases the Council, showing that we are prepared to invest certain large municipalities in this Presidency with certain definite powers, at least as far as the financial management and responsibility is concerned; because, it seems to me, merely regulating procedure and the administration of a certain amount of funds which the municipalities are empowered to raise can hardly be said to be a material element in the progress of municipal administration. It is only when the people are invested with certain powers and are competent to exercise those powers that they may be said to have made some progress. At the present time, the very best answer to any enquiry for the non-success of municipalities is, we have no power and very little control. I do not see why half a dozen such places as Poona, Karachi, Ahmedabad, Belgaum, &c., the central stations in each division, should not have some such privileges as this memorial to the Council from Poona asks. I do not think that there are any grave issues involved. If the people show that they appreciate that power, let them have it. If they are

fit for it, I do not think any person here would be willing to contend that they should have more, or that there should be an extension of any more substantive powers such as these. I think a Local Board such as that in England would not prove beneficial to any great extent in this presidency. There is no doubt a tendency to centralisation in England; but I think the case of England is altogether different. We have hardly the machinery for carrying out the work, as they have in such an efficient state as England. We have in a measure to create what we are legislating for. I think we have the materials at hand, and all I shall ask for is that these materials may be fairly tried by the Council. I think it would have been very desirable if all our municipal laws had been thrown together; and I think that at some early date the desirability of these Acts being put together into one might well be discussed by this Council.

* * * *

The Honourable Rao Saheb Mandlik moved that the words "No female and" be omitted from Section 21.

Carried.

SPEECHES AND MINUTES
IN THE
VICEREGAL LEGISLATIVE COUNCIL.

THE BIRTHS, DEATHS AND MARRIAGES REGISTRATION BILL.

16*th January* 1885.

(The Hon'ble Mr. Amir Ali suggests that the Bill be extended to all communities.)

The Hon'ble Mr. Mandlik said:—It strikes me that the Bill as it has been introduced will be better adopted for the purposes for which it is intended than if its scope is extended as has been suggested by the Hon'ble Amir Ali. I am sorry I cannot see my way to support the changes indicated by Mr. Amir Ali because, to speak nothing of financial considerations, there are other difficulties in the way. Indeed, so far as I know, the feelings of leading Hindu gentlemen all over India (outside Bengal perhaps) would be opposed to any system of registering marriages, births, &c. None but those mentioned by Mr. Ilbert have asked for it. The question of sending candidates for the Civil Service to England may be a very important one to the very few persons who are concerned, and even in their case there is no real difficulty; and it strikes me that, when we consider the number of people whom this Bill will affect, if its provisions are extended to Hindus and Muhammedons, and the cost of the machinery which will be required to bring the Bill into operation, and also the little value which would be set upon it by those classes,—I am now speaking the views of Hindus and Mahomedans of nearly all the provinces in India,—I think it is a matter of serious consideration whether, without a proper reference to the Governments of the various provinces, this Council would think of extending the scope of the Bill in the manner which has been suggested by the hon'ble member.

The suggestion was not adopted.

THE BENGAL TENANCY BILL.

2nd March 1885.

(Sir Steuart Bayley moves that the Bill be taken into consideration.)

The Hon'ble Mr. Mandlik said :—

My Lord,—In this matter I propose to follow a moderate course, as I think it will be the best under the circumstances ; for this I have my reasons which I now propose to give. The Bill, together with the Select Committee's Report, as well as the dissents, have now been before us for more than two weeks and a comparative study thereof along with the Bill in its previous stages, has been a task of very great difficulty to me. The cause of this may be partly seen from the review that has been just submitted by the Hon'ble Sir Steuart Bayley. The hon'ble members who have followed him have had, with one exception, the advantage of being on the Select Committee for more than a year. If my remarks appear, therefore, somewhat cursory and disconnected, that circumstance arises from the necessities of the case. The mass of the district papers, unindexed, has to be looked into each time from a differently-placed stand-point. This is, however, not my only difficulty. Questions of principle have been introduced into the discussion in the Committee, and by different members of the Committee in their dissents; and they also arise in the papers circulated to the members of this Council, and in the speeches of my hon'ble colleagues who have preceded me. In justice, therefore, to myself, and to the Government of India, whom I am bound to help with such little light as I may be able to throw on the subject, and to their officers, who have worked hard to give their opinions, as well as a variety of information about their respective districts, I must dwell for a few moments on the whole matter now before us.

The Legislature of India can only follow a safe and sound course. The question now before us directly affects 58 out of 217, or more than a fourth of the revenue or judicial districts of British India and indirectly about twice as many more. The Permanent Settlement is not in question now, and cannot be.

I know, my Lord, I am here treading on delicate ground. But I have my views on the subject, and the Government of India has now finally approved of the principle. The Permanent Settlement is the sheet-anchor of the Government and the people, and we hope that when all the conditions are fulfilled (be it two or be it three conditions), it will be introduced in its own time throughout the empire as the best political and economical measure that can be devised. Neither party to this present contest refers to it, except as a means of getting rid of their own difficulties. I allude to it now, because it has been introduced into the discussions both here and outside, and because these discussions have caused unrest, for which I see no sufficient cause, and which ought not to be lightly indulged in.

The brief history of the present Bill may be thus given. In 1859 the Occupancy Act was passed, recognising heritable but untransferable occupancy right under certain circumstances. This was repealed in 1869 by a Bengal Council Act. Still, the rent difficulty was not overcome. Zemindars could not recover rents. This was admitted by the Government of Bengal, and by the Government of India, in 1877-78. How is this got over ? This is what the Divisional Commissioners say. The Commissioner for the Presidency Division says that the zemindars had " a good right to expect a very much more substantial relief" in regard to the recovery of rents. He holds that the Bill, if passed into law is not likely to end in a satisfactory solution of the questions at issue. The Burdwan Commissioner is opposed in a manner more pronounced ; so are those of Dacca and Chittagong. The latter would urge the non-extension of the measure to his district. The Commissioner of the Rajeshahya Division is altogether opposed to the Bill, and thinks that while the ryots of Bengal have been the stronger, and the Lieutenant Governor n 1877 thought that a Bill for the proper recovery of rents was required, something else, which was not then considered necessary, has taken the place of the Rent Bill. He shows that rent-suits have increased by the grant of occupancy rights, presumably to improvident people.*

* Mr. Oldham estimates that about 80 per cent. of the civil suits in the Sonthal Parganas are instituted by money-lenders to recover advances made to raiyats, a large majority of whom have occupancy-rights, and

Again, the Board of Revenue consider that the rents are lower than what they were in the beginning of the last century. And this would rather indicate that we must look chiefly to a good rent-recovery law, abolition of illegal levies, and the partition of all partible properties for our help.

In face of these facts, it is hard to say that the present Bill does provide additional facilities for the recovery of rents on which the payment of the *jumma* depends, and which was asked for and promised. After having studied the matter, I must say that to me the natural solution of rent difficulties appears to be the amendment of Act X. of 1859, and not its repeal. We ought to have had complete statistics placed before us. I do not now advocate taking additional evidence. The reasons for this will be seen from my subsequent remarks. I know the Government of Bengal complain (letter, dated 27th September, 1883)—"It is a misfortune that Bengal is so absolutely destitute of a record of rights." And the hope is there

---

the following figures for the year 1883 compare litigation in the three districts just mentioned :—

District.	Population.	Number of civil suits instituted.	Number of civil executions of decree instituted.
Sonthal Parganas .	1,568,093	7,351	4,253
Dinagepore . .	1,514,346	5,188	2,518
Rajshahye . .	1,338,633	2,674	1,930

Further on, he observes—

"I have no figures showing the number of civil suits in the Sonthal Parganas before such provisions as those in the Bill were introduced, but Mr. Oldham's statement that they greatly increase litigation seems sufficient.

"Lastly, Messrs, Livesay, Newbery, Ruddock, Dalton and Tute, and I would point to the following figures for 1883 as showing that litigation for the recovery of rent has not been decreased by the provisions of the Bill though Mr. Oldham here again thinks that without transferability there would not be nearly so many rent suits, as fewer money-lenders who quarrel with the zamindars would become occupancy-raiyats :—

District.	Number of rent-suits instituted.	Numberofrent executions instituted.
Sonthal Parganas . . .	3,892	2,805
Dinagepore	3,902	1,620
Rajshahye	1,978	853

expressed that when such a record is established, "disputes will be impossible." I regret I cannot join in the expression of the latter hope. Disputes do not depend on the mere character of public records. Their causes are deeper and varied, and I may say that the greater the complexity of legislation and pressure of population on the means of subsistence, and in some measure the advance of modern civilisation itself, the larger will be the quantity of litigation. Historical experience completely supports me in this position. But my present complaint is of a more practical character, and relates to matters like eviction, distraint, &c., which we shall soon have to consider when going into detail. as I hope we shall do. And the complaint is based upon the existence of the present law, beginning from Regulation VIII of 1800, and coming to Bengal Act VII. of 1876. These laws were passed for securing some such statistics; and we ought to have mouzawar, or village register, and Pergunnahwar, or district register, prepared under them. They would have given a large quantity of information about all the lands in each district, their situations, dimensions, holders, and other particulars. From these, valuable information about the state of the people could have been gathered. I extract specimens from the papers handed up by the Commissioner of the Patna Division, which show that within the last eighty years in the Gaya District, each estate has been split up into six and even more portions, and the number of proprietors has increased from 18 to 24 fold.*

---

* *Extract from enclosure of Commissioner's Report No. 484 R., dated 7th July, 1883, page 11 (note).*

"In the 24. Paraganas, which are now comprised in the district of Gaya, the total number of estates in 1789 was 744, and the number of proprietors 1,160; in 1871 the number of estates was 4,411 and the number of registered proprietors 20,453. In 80 years, therefore, each estate has, on an average, been split up into six, and, where there was formerly one proprietor, there are now 18 (Statistical Reporter, Volume XII, page 126). In 1790, there were 1,232 separate estates on the rent-roll of the Patna district, as then constituted, held by 1,280 registered proprietors. Including a net total of 777 new estates obtained by transfer from the Gaya district, the number of estates on the rent-roll of the district amounted in 1870-71 to 6,075. The number of registered proprietors had increased to 37,800. Allowing for the increase in the size of the district by the addition of the Behar sub-division, the number of

This is one example in regard to the case of the proprietors, as the one I gave before was in regard to occupancy tenants. As a very considerable number of these are said to exist in Bengal, such information would have cleared up many difficulties in regard to recovery of rent and other matters. None of the dissents, so far as I can see, supply any help in this direction. All zemindars could supply statistics, and ought, I think, to have been called upon to do so.

Turning therefore necessarily to the divisional reports, the state of matters is not quite reassuring. Some officers would rather work the present law more strictly and stop the illegal *abwabs*. Others think the new law not at all necessary, and have proposed provisions empowering the Local Government to introduce it into any locality at its discretion.

As far as I have been able to gather, the Commissioners oppose the Bill, first as unnecessary, and as going beyond the necessities of the case; and secondly because it will not produce the results anticipated, but will injure vast interests without any compensating public good, and end in injurious litigation to the detriment of all parties. Some Collectors would have a moderate Bill. Such being the state of matters, I am sorry, I am not able to follow the line taken up by those hon'ble colleagues who complain of the present Bill as not conceding all they claim for the tenants. The evidence of the District Officers is quite the other way, and I think it should not be set aside except on very strong grounds sufficient to override their weighty representations. His Honour the Lieutenant Governor has a fore-told complaint against the Bill. The Hon'ble Mr. Reynolds thinks that if anything, this is a law which cannot last long. The

---

estates under the Patna collectorate had quadrupled since the original assessment in 1790; and where there was formerly one proprietor, there are now probably 20 (Statistical Reporter, Volume XI, page 187). In the district of Tirhoot the figures are more marked. In 1790 there were 1,321 estates held by 1,939 registered proprietors. In 1871 the number of estates was 11,500 and the number of registered proprietors 73,416 (Statistical Reporter, Volume XIII, page 168). So long ago as 1789 Mr. Shore remarked on the insignificant size of the Behar estates and the proverty of their owners. If subdivision has gone on thus rapidly with estates it is hard to expect a different state of things in case of transferable occupancy-holdings."

Hon'ble Mr. Ameer Ali is also dissatisfied at the non-extension of occupancy rights to classes who the district authorities think are not generally entitled to them ; while the Hon'ble Mr. Gibbon thinks that complete transferability ought to have been enacted instead of its being left to the Courts and custom. Again, I see a demand made in some quarters for what is called spirited legislation. To those who do so, I again refer to the valuable reports of our district authorities. These are entirely opposed to such a course. Indeed, it seems to me that those who advocate such a course are hardly aware of the gravity of the occasion or the seriousness of results. Social and economic changes, to be stable, must be slow, and must come from within. Does the evidence before us warrant such a proceeding? I am bound to say, no ; I would rather that the energy wasted on such attempts at seeking spirited legislation were more usefully employed in training cultivators, say over given areas, to be more hard-working, self-reliant, truthful, God fearing men. Their example would be more efficacious than a cart-load of invectives against vested interests of any kind, and would certainly produce a moral revolution which the Government above all others would be the first to recognise.

The Government of India, in the Irrigation papers published in October, 1871, laid down a well-known caution in regard to the evils produced by periodic settlements. The principle which underlies those observations appears to be that frequent interference in the private affairs of the people must produce evil. Here, on the contrary, the call upon the Government seems to be not to desist, but to come and interfere on almost every conceivable occasion, either through the Revenue or the Judicial Department. Nothing is to be settled, it would seem, out of Court and by private agency. I am sorry to see the unqualified assertion of such a principle. The Hon'ble Mr. Evans has already drawn attention to it, and I hope some substantial improvement may yet be made in this matter during the progress of the Bill.

Again, the divisional authorities speak of considerable increase of establishments as one of the inevitable results. Thus in regard to the Chittagong Division, the Commissioner says that litigation has increased since the last Act, and the tenants are evidently no better

off. Evidently more complicated provisions will necessitate new establishments. In Rajashahye the new provision as to deposit of rents, will require new establishments. In the Dacca Division, the demarcation of Khamar lands (which is considered objectionable there and elsewhere) will require heavy establishments. Dacca, my Lord, is in East Bengal, of the character of whose people the Hon'ble Mr. Evans has told you on the last day, and you may usefully consult the records.

Taking yet another view of the case, our colleagues the Hon'ble the Maharajah of Durbhungah and the Hon'ble Peary Mohun Mookerjee are both dissatisfied with the whole work, and I believe it is now clear that the measure is not quite suited to the circumstances of Behar. Will it benefit Bengal? I fear the evidence before me does not permit of my giving an unqualified answer in the affirmative. As I have said before, the Local Government has not supplied us with such statistics as the present laws enjoin the keeping of. Were it feasible and useful at this stage, I should have agreed to receive further evidence. But, we are not now experimenting on inert matter which obeys certain natural laws, and with which you can repeat your experiments almost regardless of time. Such a method of experiment is not applicable to the subject before us. The state of the parties affected is, no doubt, undergoing some change; and yet it cannot be said that it has gone on so long as to have produced new combinations which the district officers have not already reported upon, and there is a certain subordinate official agency to which I would not now refer for further reports. I shall briefly explain what I mean by this observation. A subordinate officer in Bengal submits a report which to me is quite a curiosity. He allows two days only to respectable gentlemen in his subdivision, to submit their opinions. His own report is simply ludicrous. He has gone through the Bill which he says provides necessary safeguards against the zemindars; he ventures to remark that more than sufficient privileges have been granted to the tenants, and would rather have seen a simple, speedy mode of recovery of arrears, and protection of tenants from illegal exactions and harassing enhancements. When saying this he forgets that he has already considered the Bill sufficient in these respects. As if, however, thinking he had been doing too much, he again condemns the Bill as tending to create a multiplicity of

intermediate tenures, detrimental to actual cultivators of the soil, and likely to prove of doubtful expediency and productive of litigation. Then comes the final touch. He says:—"*The Bill is a very complete one, and I am unable to offer any suggestion.*" The fact seems to be that the writer has no confidence in himself; how can he expect that others should confide in him? I am unable, my Lord, to say how the multiplication of such evidence will be of any value; and there are some more specimens of it on both sides. In fact some ryotee petitioners in Orissa have already picked up a kind of phraseology which is scarcely parliamentary. I would therefore not be a party to ask for further evidence on this occasion. We cannot artificially isolate the subjects of our inquiry; and there have been no violent social or economic changes which can have altered the social and enconomical institutions of Bengal, or the character of its people, since the last District Reports were framed, within one year. If there were any such changes the Local Government would doubtless have sent up all the materials to the Council. Pursuing the same subject and working at it from another point of view, we must see what we have really to do. The Legislation of 1859, as amended in 1869, the proceedings of the Commission of 1881, and the discussion that has been now going on for three years, are all before us. And it seems to me, the point that is being lost sight of is this: are we now going to construe for the first time the Regulations of 1793; are those Regulations along with all amendments upto this date as viewed by the conduct of all the parties concerned, *viz*, the Government, the landed proprietors, and the tenants? A good deal has been said on both sides in regard to customs, but I take it as a rule sanctioned by high authority that a custom cannot be acknowledged as a basis of Legislative action unless it has been consciously acted upon by the people as a rule of their conduct in the parties of every day life. Unless it is so, I fail to see on what foundation it is to stand, and unless it has a foundation, I should be chary of accepting it as a guide. Mr. Longfield in his paper on "the revenue of land in Ireland," printed in the collection of essays published under the sanction of the Cobden Club, gives the following criterion for judging of property in land, and this, I think, may be safely taken as a guide in this discussion. He says:—"The rights of the present owners do not depend upon the truth of any theory respecting the origin of

proprietorial rights. It is a rule of natural justice that, says that, if I encourage a stranger to buy from a wrongful owner property that is really mine, I cannot justly press my own claims against the purchaser. This is the case with land, in every settled country. The present owners either themselves purchased the land or derived their rights under those who purchased it with the sanction of the community represented by the authority of the State. In many cases the State itself received part of the purchase money from stamp duties on the purchase deeds." Again a high authority has laid down (Kent on American Law) that "to complete the right to property, the right to the thing and the possession of the thing must be united."

What then are we now to do? I have tried to give a brief view of the Bill of 1883 taken by some of the leading officers who are in the same position as I am now; but who have the actual work of the administration on their hands, but I fear I have not done them justice for want of time. I will now examine the Bill and see what mischiefs it will suppress, and what remedies will be advanced by it. Viewed in this light, it seems to me that the *khudkasht* ryot should have been allowed to remain undisturbed. *Khudkasht* is a well-known term, and if necessary, its equivalent might have been simultaneously given, but neither the "settled ryot," nor the "resident ryot" supplies its place. *Khudkasht* contains its own definition, and its attributes have a well-known history of their own.

In respect to another subject, I have a few words for this occasion. Though the present is not strictly speaking a revenue law, it will indirectly affect the revenue administration of the country, and it occurs to me that, now that the subject has been exhausted thread-bare, there ought to be no artificial restrictions on the quantity of zemindari or ryotwari holdings. If nine-tenths of Bengal are now under cultivation, and the remaining tenth is waste, it cannot affect any tenant if the proprietors of that waste land were allowed to work it, or to sell it, or to contract with lease-hold tenants, so as to reduce it into cultivation. That they have allowed it to remain uncultivated is a circumstance that has contributed to their own loss. That it has not been put on their rent-roll, is, I conceive, because no rent has been derived by letting it, either by *batai* or cash rates. It,

therefore, could not appear as cultivated land, either in their own or the Government registers, but why should there be a legislative prohibition to the proprietor making it his *khas* land, which it substantially is, and still more, why its reclamation should be clogged with unnecessary restrictions is what I cannot see. I make these observations from personal experience in managing alienated lands. When this and such like arrangements are urged, one is referred by the Bengal Government to customs of former Governments for the power to do so, on proper occasion. Nobody advocates the non-exercise of superintending powers by our own Government within constitutional limits. But I am supported by high authority in protesting against an improper application of such examples. A constitutional and well-administered Government like our own can hardly set up the *effete* administration of Bengal in the 18th century as a mode before us to copy. The provisions which are themselves cited in another part of the paper in connection with a similar example were repealed as being *obsolete* so long ago as 1876. The process of comparison is, therefore, I must say, with great deference, logically vicious. If there were any fair scheme applicable to both sides, allowing such land to be converted into ryotwari holdings on a graduated scale to be agreed to on both sides, I should have been prepared to take such improvements as a good start, and some tangible good might have been attempted. This portion of the Bill is not favourably reported upon in the district papers before us.

In regard to home-stead-lands, I think, unless such lands are connected with the ryot's agricultural land of the village, mere outsiders should not be allowed to hold them. This is, I believe, the customary law, and as the native community is situated, it is, I think, a salutary provision. Neither the landlord nor the cultivating ryot should be permitted to dissociate the one from the other. Neighbours' quarrels in matters of adjoining lands are the worst in any country, but when to other difficulties, social and religious ones are added, the cup overflows, to the detriment of the whole village community. I trust, therefore, that this subject, along with others, will be duly considered. The papers referring to Behar on this subject are important and deserve careful consideration.

Another subject on which I am bound to express my opinion in this place is the restriction on the freedom of contracts generally,

Over a wide country, containing 68 millions of inhabitants, the Government of India has doubtless had before it cases of localities or of a class or classes, from which this liberty may, on due cause being shown, be sometimes withdrawn; and when we remember that in the infancy of the land law, and in several parts of the country, the law, as it stands now, does not permit of transfer of occupancy holdings by contract, I may accept the present measure as a tentative solution of the difficulty so far as the tenants are concerned. But on the other hand with regard to waste lands on which nobody has settled I should prefer all contracts being left free as heretofore subject to the equitable jurisdiction of Courts of Law. This view is also supported by the evidence of the district authorities. It occurs to me that while one side to this controversy would deny anything which will affect their rent-roll, the other cannot make up their minds to distinguish what is well-known throughout India as *swamitwa* or right of dominion and tenancy. I am bound to say here at once that I agree with neither. The Bengal Revenue officers do not support such a contention. Why is the Legislature to attempt to square the zeminder to fit into some new imaginary official circle?

There are some other matters of which proper notice may be taken when they come up for discussion. While the Bill enacts several new provisions of law of questionable utility, and which will not only increase the work of district officers, but introduce a larger interference of State agency into the private affairs of the people than is either necessary or desirable, no positive provision, as it seems to me, has been made for relieving large classes, both of tenants and land-holders, who, I think, ought to be relieved. It appears clear from the papers before us that sub-letting is the standing evil to which a large amount of the sufferings of the Bengal ryot may fairly be attributed. This may be seen particularly by referring to paragraphs 14 to 17 of Mr. Cotton's memorandum prepared for the President of the Select Committee on the Tenancy Bill, which, according to His Honour the Lieutenant-Governor, "merits every attention." Mr. Cotton says: "In one respect, however, the cultivators of the soil undeniably are placed at a disadvantage by the practice of sub-letting, for it is a peculiarity of the system, although these tenures and under-tenures often comprise defined tracts of land, a common custom and to sublet certain *aliquot* shares of the whole superior tenure, and

in consequence the tenants in any particular village of an estate are often required to pay their rents to two or more than two, and often to many different landlords." (p. 916).

Although, as Mr. Cotton remarks, following the historian Hallam such a result is by no means unnatural, still that it is not a necessary result may, I think, be safely inferred from the papers before us. Thus the report of the Officiating Collector of Shahabad, in regard to *gujestha* holdings, is in this connection valuable as showing that in places like Bhojepore, those who cultivate their own lands on these tenures are very well off. I know that it is not correct to generalise from limited data; because property both acts and is acted upon by those who hold it, but if it is intended on proper occasions to help the creation of small properties with distinct responsibilities, and with provisions for actual sub-divisions amongst the sharers, I think opportunity may now be taken to enact some provisions which would be an improvement on the present state of things.

As regards our present course I would have voted for temporary relief being given to places like Mymensing and Dacca by passing special measures to meet their cases. There is enough of material before us to support such a proceeding. But this, I fear, would now be impracticable. It is now nearly six or seven years that the subject has been before either the Government of Bengal or the Government of India including the deliberations of this Council and we are given to understand that it will not conduce to the cause of good government if the matter be left in this state till the Council meets again here in December next. The Bengal Government, as represented in this Council, does not ask for delay in the minutes now before us, although those minutes do not accept the present Bill as a final settlement. The proprietory interests, as represented by the Hon'ble the Maharaja of Durbhungah and the Hon'ble Baboo Peary Mohun, request republication, and if this were not a virtual postponement for a whole year, I should have voted for that course. As it is, any extension of time which can conveniently be allowed to them may, I think, be granted; but if that cannot be, then I hope the Council will consider and discuss all that has to be said *pro* and *con*, for all the interests concerned are equal objects of conservation to the British Indian Government. While I have given my reasons

for the course I am going to adopt, I regret I am not disposed to concur in the remarks, either here or outside, in regard to the opposition of our zemindar colleagues. The case of the Maharajah of Durbhangah is as good as proved. If it were not, I still think, both he and the Hon'ble Baboo Peary Mohun are bound to state all their objections. The district authorities show what they will suffer, and it is quite natural they should feel it ; and if they, do I think we ought to be glad to hear them. They are representatives of a very large and important class. I do not think that it will be just to tax the present landed proprietors of Bengal with the short-comings of any of their predecessors, because I think the progress of legislation, as well as the papers now before us, make it pretty clear that on the whole they have done their work well. But now comes another agency into greater prominence, and with the light which is thrown on their condition from both sides, it is clear that neither has arrived at its goal.

What then are we to do? The Bengal Government calls for immediate action. This is supported by the hon'ble member in charge, who, I feel sure, will not rush into any extreme course. A few of the district papers move on the same lines. Though not inclined in favour of the Bill of 1883, they counsel legislation under some of the heads laid down in the Bill, on which they favour us with their remarks. My duty, therefore, is clear. That is to make the most of what we have, and not to postpone action for another year.

My Lord, I have already taken more time than I had proposed to myself. I am quite sensible of the imperfections which there may be in my work but I can assure your Lordship and my colleagues that I devoted more hours to it than one is usually credited with doing in this climate. If there are any sides of the question on which more light can be thrown no body would be more glad to learn than myself, but I have a right to say that I have done my best under the circumstances, and having made these remarks, I beg to say that I shall vote with the hon'ble member in charge for the further consideration of the Bill in detail.

* * * *

4th March 1885.

(The Honourable Mr. Mukerji moves that sub-section (7) of S. 20 be omitted.)

The Honourable Rao Saheb Vishvanath Narayan Mandlik said :—I think the amendment is a proper one. The presumption created by the Bill is a new presumption, and Mr. Justice Field has in the minute before the Council said he could conceive anything more dangerous than the presumption it is proposed to create. Mr. Dampier, formerly a Member of the Board of Revenue, has said that, on the whole, he would reject the presumption created by the Bill, and Mr. Field says that the effect of section 26 (2) taken with section 35 would be in a very short time to transfer the real ownership of the land from the zamindar to the raiyat. With regard to auction-purchasers it was quite the other way.

Rejected.

* * *

5th March 1885.

(The Honourable Mr. Amir Ali moves for some addition to S. 24.)

The Honourable Rao Saheb Vishvanath Narayan Mandlik said :—"The Bill as it comes to us is the work of the Select Committee, who have carried out the wishes both of the Government of Bengal and the Government of India. I, therefore think the onus is upon those who come here to advocate a change, unless it can be practically shown that the change is one for the good of the country. So far as I have followed the current of the decisions of the Bengal High Court, a mere occupancy-right does not carry transferability so far as Bengal is concerned. I think that the four corners of the present legislation are enough for our present purpose without going either to the Dekkhan or other parts of India. I think that sufficient has been conceded on the lines of the Bill as it stood. If occupancy was not transferable according to the law as it was interpreted by the High Court, and if the Government of Bengal and the Government of India thought fit that legislation should not advance further, they had devised restrictions for the protection of the public. Whether it was the landlords or the raiyats who required protection, that was hardly the place where one could now go into the question

of absolute transferability. It was too large a question. I think that the Council should remember that if the section now proposed were introduced a very large number of sections would have either to give way altogether or would have to be further hedged in by restrictions, which I think it would be very difficult at this stage to introduce. I will, therefore, oppose the motion."

Withdrawn.

* * * *

(The Maharaja of Darbhanga moves that S. 43 be omitted.)

The Honourable Rao Saheb Vishnanath Narayan Mandlik said :—"This is a very novel provision. Mr. Field said :—

'I am unable to see the justice of the restrictions proposed to be placed on the enhancement of rent of none-occupancy-raiyats.'

"This new legislative creation is a tenant-at-will, and it strikes me that the direct result of these provisions will be to increase the number of day-labourers and to decrease the number of these new creations. I say new creations advisedly, because the High Court has ruled in the case of occupancy-raiyats what their privileges are, and according to what Mr. Field says, both in the work on which the Rent Commission proceed and in his work on land laws generally, it seems the legislature so late as 1859 and 1869 have left this new question untouched. I cannot understand what equitable rights a man can have who takes land on certain definite terms. I therefore support the amendment."

* * * *

6th March 1885.

(Sir Steuart Bayley moves that another section be substituted for S. 29.)

The Hon'ble Rao Saheb Vishvanath Narayan Mandlik said :—"The only point I have to suggested is that which was referred to yesterday by the Hon'ble Mr. Evans, namely, the principle which he advocated as to occupation for three years, and which is accepted by the hon'ble member in charge of this Bill. The principle which I maintain is most definite, namely, that of the registration of a lease

which is not admitted, as may be seen from the first proviso in this amendment, which runs thus :—

> 'Nothing in clause (*a*) shall prevent the landlord from recovering rent at the rate actually paid for a continuous period of three years immediately preceding the year of which the rent is claimed.'

"The less determinate element is accepted, and the more determinate element is rejected. With regard to the third proviso, which runs thus :—

> ' (iii) When a raiyat has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of the landlord, nothing in clause (*b*) shall prevent the raiyat from agreeing in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable',

I think the term 'specially low rate' is very indefinite, and will lead to litigation ; so also is the expression 'in consideration of cultivating a particular crop for the convenience of the landlord.' While I was ready to accept the proposals placed before the Council and afterwards withdrawn by the Hon'ble Mr. Evans, I cannot say the same with regard to the new provisions. They are open to objections which I have above explained. By letting in oral evidence, we are upsetting one of the main principles of the Bill."

Carried

* * *

9th March 1885.

The Hon'ble Rao Saheb Vishvanath Narayan Mandlik moved that to section 112 the following be added :—

> " Where the Local Government takes any action under this section, the settlement-record prepared by the Revenue-officer shall not take effect until it has been finally confirmed by the Governor-General in Council."

He said :—"This chapter has been admitted by the hon'ble member in charge of the Bill to be exceptional, and I do hope with him that the occasions on which it will be necessary to invoke its aid may not be so frequent as His Honour the Lieutenant-Governor thinks they might be. No doubt cases will arise in which it will be necessary to impose the strong arm of the executive power to bring con-

tending parties to submit to rents by settlement. And therefore, as in some portions of this chapter, leave is given to settle rents and reduce rents and to do what in the opinion of the Revenue-officers entrusted with carrying out the operations of this chapter (the effect of which will be to suspend at least for the time the operation of the general law) may be necessary to be done with regard to private property. I think, however, that it is so necessary for the satisfaction of both landlords and tenants that an opportunity should be given for appealing to the Government of India before the record becomes final, that I feel it essential in the interests of the public that a proviso, such as that which I now propose, should be enacted. I distrust nobody, and no doubt your Lordship is impressed by the fact that these sections of the Bill are necessary to good government; but to me they throw a new light on the state of affairs in this province, and it is only as such that I can view them. But I think it is essential when the ordinary law is suspended that the Government of India should be a referee in the last resort for the purpose of confirming that record when it has been prepared. I move this amendment in the interests of the public, and it will in my view give more assurance to all parties concerned. A reference has been made to me with reference to the Bombay Presidency, and I can say at once that there is no such record-of-rights there. I do not wish to go into the general question, which is a very large one, and under the circumstances disclosed in paragraph 42 of the Select Committee's Report, I do not wish to raise any question about it. I think that when the Government of India determines that sufficient reasons exist to introduce this chapter, they should be entrusted with the duty of seeing that the record should be so prepared that it may be adopted as the future record-of-rights."

Carried.

* * *

9th March 1885.

(The Hon'ble Mr. Gibbon moves an amendment to S. 120.)

The Hon'ble Rao Saheb Vishvanath Narayan Mandlik said:—"I shall vote for the amendment. I have gone through the whole chapter relating to waste lands, and there appears to me to be no reason for prohibiting a man who is a large proprietor of waste lands

from reserving to himself certain lands for his home farm. But by this section, directly he lets in a cultivator, he loses the land. The certain effect of this provision, I think, will be that he will let in no cultivator, and unless an increase of hired labourers is in view, the object of the Act will be defeated by these very restrictions."

Rejected.

* * *

(The Hon'ble Mr. Gibbon moves that S. 174 be omitted.)

The Hon'ble Rao Saheb Vishvanath Narayan Mandlik opposed the amendment. He said:—"I think the section will introduce, in addition to other troubles, the speculative element against which all the Civil Courts have been struggling. Although it is in one sense an attempt to relieve tenure-holders and occupancy-raiyats by opening a door to repentance, I think in all these matters the quickest step is the wisest step for all parties concerned. A man who has allowed so many opportunities to escape him is not the man for whom we ought to plead. The purchaser is no doubt sufficiently recouped by getting back his money with interest; but the real difficulty is the opportunity given for speculation, and I think that can do no good."

Rejected.

* * *

11*th March* 1885.

(The Hon'ble Mr. Mukerji moves for amendment of S. 173.)

The Hon'ble Rao Saheb Vishvanath Narayan Mandlik said:—"I support the amendment, and I am sure it does not go far enough. I think there ought to be a distinction between occupancy and non-occupancy-raiyats, and there ought to be no general provision against raiyats and superior landlords as far as possible adjusting their mutual differences without resort to the machinery of the Courts."

Rejected.

* * * *

11*th March* 1885.

(Sir Steuart Bayley moves that the Bill be passed.)

The Hon'ble Rao Saheb Vishvanath Narayan Mandlik said:—"I had no idea that we should be called upon to vote to-day for the passing of the Bill. After what has fallen from several hon'ble mem-

bers in this Council in reference to the shaping of the measure in the Select Committee, and when, as the Hon'ble Mr. Reynolds once or twice remarked during the discussion in Council, that certain principles had been laid down in Committee which he thought were not to be departed from, I saw it was vain to hope that any radical change would be made on some points which in my opinion were clarly a departure from the law as it is enunciated in the acts of 1856 and 1869. In this contingency, and having carefully looked into the subject, I find the position is one the difficulty of which has been estimated by one of the learned Judges of the High Court, Mr. Field, in this sentence. He says :—'We ought not to interfere with existing rights which have been the creations of our own administration operating upon the natural progress of the country, and he held that no case had 'been made out for disturbing the land-marks of property.' This remark applies, as far as I am concerned, to the position held by sub-raiyats and non-occupancy-raiyats. I do not think either of these classes fill any acknowledged position according to the customary law of India, and I do not except Bengal in making that statement. I speak subject to correction, but having studied the land laws of nearly all the Provinces, I do say that both these classes of people are new creations. And I do not think a sufficient case has beed made out for their being brought in in addition to the large and varied interests we have already got in Bengal. On the other hand, I think, having left the security of the raiyats in the shape of registered contracts, and having enacted the new sections 19, 29 and 43, we have let in a wide door, as I said when speaking to one of the sections, which we might have closed no doubt by inflicting a certain amount of hardship; but that door would have protected a very large number of raiyats. And, on the other hand, we have for the first time enacted provisions with reference to the accrual of rights and the non-accrual of rights in places where no rights have ever existed, as in the case of waste lands; and although the amendment which was carried to-day in reference to the reclamation of waste lands will give protection to a certain extent, I regret the Council should have hesitated in carrying through some provisions which would have been of very great assistance to the Government and have acted as a direct incentive to vast improvements in landed estates. I see no reason whatever,

where no vested interests are concerned of any class of raiyats, why we should forbid people to enter into contracts which would have the protection of registration which I have referred to, and which, while serving the interests of both parties to the contract, will assist the progress of the country.

"A good deal has been said in regard to the agitation in regard to this Bill. To both sides I would say that they ought now to apply themselves to the honest working of the provisions of the Bill which will be passed to-day. For myself I think the Bill will have an indirect effect in the promotion of litigation to an extent that I almost fear to contemplate. There is not a single provision, so far as I can see, in any of the larger departments of the Bill which leaves it to the parties to settle their own interests by amicable agreement. This is a portion of the Bill which I have failed to understand. It is possible that, not knowing the details of the enhancement law and the law of contracts and possibly of other departments which have been amended by this Bill, I have not been able to follow one side or the other. But I have read the papers very carefully, and I think, that litigation will be the result. While, therefore, I shall not oppose the passing of the measure, I am sorry to say that I do not see how I can support it."

Carried.

THE KHOJA SUCCESSION BILL.

MEMORANDUM.

I have read the papers in reference to the Bill to amend and define the Law of Testamentary and Intestate Succession to Khojas.

The principal difficulty therein suggested is in respect to the definition of the term *Khoja*. Practically there is a certain class in Bombay whom we have taken hitherto to mean Khojas; but since reading the papers chiefly from the Panjab, I have come to the conclusion that some mode must be devised for distinguishing those Khojas for whom this Bill is intended from those who are *Khojas* only in name; otherwise we shall be creating difficulties. Again the non-Khoja wife appears to be second our difficulty. Having considered succession laws generally, and after viewing man in all the relations of life, I am of opinion that a wife must be treated as a wife in all respects, and if a Khoja male marries a non-Khoja female, he must be prepared to accept her as his wife in future. The Legislature would not I think be justified in sanctioning a distinction which is opposed to the fundamental objects of marriage relations.

When there is a better agreement among the community generally, I hope the capacity to succeed may be conceded to the more distant relations whose natural relationship gives them a claim to succeed to such property. But in the meanwhile, section 48 must, it seems to me, be accepted as it stands; because it is clear from the papers that the *Jamat* as such has no independent existence. Its vitality is altogether secondary, and depends on the will of the Inam who cannot be said to be a member of the Jamat, at all. There are other difficulties connected with this matter which are met by the present section.

As regards the wills, I am sorry I cannot accept the decision in the *Tagore* case as one which ought to be perpetuated by the Legislature as a part of our Statute Law. But so far as the papers go, there seems to be no reason why the present provisions may not be enacted for the benefit of the Khojas who have applied for this law, and who have no customs of their own governing this branch of the law.

V. N. MANDLIK.

28*th April*, 1885.

MEMORANDUM

ON THE

DRAFT OF A BILL TO AMEND AND DEFINE THE LAW

OF

TESTAMENTARY AND INTESTATE SUCCESSION TO KHOJAS.

(*As provisionally amended by Select Committee.*)

I observe that the term *Khoja* is still left undefined.

The *proviso* to sub-section 1 of S. 2 may perhaps be justified in this case by the peculiar circumstances of the Khojas. Otherwise it seems to be open to serious objection.

In regard to definitions, it occurs to me that the non-khoja wife may perhaps be brought in here by defining wife as "including a non-Khoja woman legally married to a Khoja." I would leave sec. 5 as it stands.

Chapter III, section 11—The question whether the widows are to succeed jointly or be entitled to divide may be considered and provided for. In wealthy Hindu families, the existence of a plurality of widows is a fruitful source of family quarrels.

Chapter V.—I think it would be desirable if the restricted ownership were confined to immoveable property as suggested by Mr. Farran but if that cannot be done the Bill must be passed as it is.

V. N. MANDLIK.

14-8-85.

(Sir A. Colvin moves for leave to introduce the Bill.)

The Hon'ble Rao Saheb Vishvanath Narayan Mandlik said :—

My Lord,—Having listened to what has been said before, I must confess that my work has become somewhat complicated, but what I propose to do is to vote for the motion to send the Bill to the Select Committee, and to submit a few observations to the Council on some of the points touched on in the observations which Your Lordship addressed to the Council last Monday, as well as what fell from the Hon'ble the Financial Member. But before I do so I must say I agree with what fell from the Hon'ble Mr. Quinton in reference to our position as regards this Bill. We have no Financial Statement technically before us, but the present Bill gives us the same opportunity for discussion as we should have had if both the Bill and the Statement had come together. I see the Hon'ble Mr. Steel has introduced the question of export duties. I must ask the hon'ble members to remember that that matter is not by any means so simple. I think that the subject of imports and the subject of exports are to a considerable extent relative questions. Sir Charles Trevelyan, in an address on Indian finance, delivered in 1870 in London before the East India Association, said as follows :—

'Although Her Majesty's Government objected in 1865 to an export duty of 3 per cent. being levied on Indian coffee for the benefit of the Indian exchequer, a duty of 45 per cent. is levied on this same coffee in England for the benefit of the English exchequer. This is neither just nor generous. The duty should at least be halved between the two exchequers, and the more so because great part of the coffee exported from India is sent direct to France and other foreign countries, and the Indian Treasury therefore misses any benefit from it. The same considerations apply to the tea exported from Northern India.'

Sir Charles had recently consulted the great economist Mr. McCulloch on this question, and his letter in support of the above views was read to the meeting.

I proceed now with the subject in hand. Having listened to the clear exposition of Sir A. Colvin, I take the immediate question

before us to be—How are Rs. 70,00,000 (or £700,000 approximately speaking) to be raised ? He proposes to do this by means of an Act which is a combination of a license-tax (on incomes up to Rs. 2,000) and an income-tax on those exceeding Rs. 2.000, the incomes in both cases being non-agricultural. I compliment the Financial Member on the distinct advance that has been made on this occasion by the entire exclusion of landed incomes. I will not follow him to those classic regions of financial perils to which he has felicitously alluded, and from which he has happily emerged. But there is, I see, an idea abroad, almost haunting a portion of the public, that the landed classes in India, who now contribute more than £21,876,047. to the Imperial revenues, are still proper subjects of further taxation To these persons I may, (somewhat in the words of Mr. Chapman) address the following observations made in this Hall in 1871. In the Presidency of Bombay ' a succession of new taxes had been imposed during the past ten or twelve years. In addition to the income-tax, we had had a cess of six and a quarter per cent. on all revenue ; a quit-rent of considerable amount on lands previously held rent-free ; tolls and municipal taxes had been freely resorted to ; salt-excise had been greatly increased ; and last, but not least, in many parts, the thirty years' settlements were falling in, and revised rates, involving an increase of some sixty per cent. on the land revenue, were being imposed. The Local Fund receipts during the year 1869-70 amounted to £618,000; while the Municipal taxes realised £530,000 . Allowing for a portion of the Local Funds being derived from jail-manufactures, harbour-fees, Native States, charitable endowments, and other sources that did not press directly on the country, he believed it would be found that the Presidency [of Bombay] contributed not far short of a million sterling over and above the Imperial revenue.' I have not been able during the short time at my disposal to make out the figures for the last year ; but the amount cannot be less. For all local improvement hitherto has meant increased taxation ; and some improvements have been of a very doubtful kind. All these considerations lead me to the conclusion that the present step of the exclusion of incomes derived from sources other than agriculture is a decided advance in the right direction. There is yet one more consideration which also tends in the same direction, and that is, the non-resort to increased salt-tax. Hon'ble members

who speak in favour of this tax ought to remember what was said in 1870 in this Council about this tax. Besides in Western India—I speak of the Bombay Presidency—there was at one time (*i. e.*, prior to 1837,) no salt-excise at all. Afterwards eight annas a maund were imposed; then one rupee; one rupee, thirteen annas, three pies; two rupees; and three rupees. In 1882, it was reduced to two It would be tedious to go through first principles on this occasion, except as a matter of sheer necessity; but I take leave to say that salt like grain ought to be practically free; or if that cannot be, t at it ought at least to be taxed as lightly as possible. I cannot understand how any body at Madras can have gone up to Government with a proposal to raise the salt-tax, which presses so hard on the masses that the poor have in very many cases been found living by scraping saltish earth, and in some cases have been actually prosecuted for so doing. I refer to the debates of 1865 and other publications in support of my arguments; and on their evidence and on my own experience of over 30 years, I hold that the present resolve of Government not to raise the salt-tax is a correct and wise step in Indian finance.

I have now, my Lord, to turn to import duties—a third item of taxation not in the budget, but which, in my humble opinion, should have been there. In so saying, I do not propose to raise any question on this occasion in reference to the Bill now before us. But the subject is very important, and as such, it is one deserving of the earnest consideration of the Government of India. Sir A. Colvin says that 'the exemption from duty, in March 1878, by the Government of Lord Lytton, of certain descriptions of grey cotton goods made the abolition of the import duties on all cotton goods a question only of time.'

It is not my object to unearth on this occasion the voluminous literature on this subject; but there is the evidence of a few facts and figures which it would be to the benefit of British India always to remember. In 1875, when the Indian Tariff Bill was being discussed in this Council, the Hon'ble Mr. Hope, after discussing the whole question, shewed that 'the case for total abolition on the grounds on which it was claimed must inevitably fall to the ground.' He also said that Mr. Massey had remarked with truth

that the Indian import duties were the lightest in the world. Not only was this statement then made, but Mr. Hope spoke of an excise-duty which might thereafter be restored to, and he warned the 'investors in Indian mills that they should bear this hint in mind; and thus forewarned, be precluded from charging the Government with breach of faith to them in the event of the imposition of an excise duty at any future date.' His Excellency Lord Northbrook, in summing up on that occasion, explained that the Indian customs-duties had never been regarded as protective; and after naming all the Finance Members from 1860 and downwards, said that 'in all financial questions the true interest of the people of India is the only consideration which the Government of India has to regard.' Such was the state of matters in 1875. What happened in 1878 is a matter of history, which will be found in a Parliamentary Return of 14th August, 1879. I do not propose to enter into the Budget of 1882, which is the next point of departure from the Indian Tariff Act of 1875.

I know the Resolutions of the House of Commons quoted in 1878 and afterwards; but the House of Commons, like the Government of India, will only ultimately decide the financial policy for India by all the considerations which are *just* alike to all interests; and now that the duties have been abolished the question to consider is—Have they had the tendency which has been attributed to them? In addition to the remarks of the Tariff Committee, I beg to refer this Council to an excellent letter addressed to Lord Lytton in 1877 by Mr. Sorabjee Shapurji Bengali, then a member of the Legislative Council of His Excellency the Governor of Bombay, and one of our most experienced and enlightened merchants on the other side of India. He is a thorough free-trader, and the facts which he advances are therefore all the more valuable. This is what he says about our cotton-mill industry, as viewed in relation to the Indian tariff:—

"I am strongly of opinion that the best interests of the country require that this new industry or any other industry should thrive or fall on its own merits. I believe that it would be disadvantageous for India if the policy of its Government were directed to support industrial and commercial enterprises and encourage the employment of capital in them by means of protective tariffs, a policy which increases the cost of the articles thus protected to the general consumer

and therefore taxes the resources of the country for the benefit of the capitalist during the time the protection is permitted to last, and which results in the loss of capital and the creation of distress when the protection is removed. If it can be proved to be a fact that all or even a moderately large proportion of the thousand and one varieties of articles at present imported into India, and included in the comprehensive name—'Cotton-goods,' can also be produced in India for commercial purposes, that is to say, as cheaply as if manufactured in Lancashire, by means of European machinery, then the interests of this country require the immediate abolition of our import duties on cotton goods; for, otherwise, the Indian mill-owner could add to his legitimate profit nearly the full amount of the import duty and still under-sell his English rival, so that the native buyer of cotton goods would pay the native manufacturer nearly 5 per cent. on the price of his bargain for nothing. Such, however, is not the fact, The cotton-goods which India imports (with the exception of an insignificant fraction) are not of the same kind which her cotton-mills can produce. Nor, years ago, even when there were no cotton-mills established in this country, did India obtain her supply of coarse cotton manufactures, such as these mills produce, to a larger extent than 10 per cent. of the total imports of cotton-goods from foreign countries. Her industry in the finer varieties of cotton goods has given way to cheaper importations from outside; but in preparation of coarse goods for the great mass of her people, India possesses natural advantages in the home-produced, home-spun cotton, which enable her to defy the world. The introduction of cotton spinning and weaving into the country by means of machinery is really then for the most part nothing more than the introduction of competition between machinery and the indigenous hand-spindle or the hand-loom, and also of competition between India on the one hand and Europe and America on the other in the supply of cheap coarse cotton-goods to several Asiatic countries and parts of Africa. The cry, therefore, that since the establishment of factories in India for cotton-manufactures, the retention of the customs import-duties acts as a protective impost, rests on no better foundation, so far at least as nine tenths of these duties are concerned, than a desire to obtain the admission of cotton-goods of every variety into this country free of duty whether protective or non-protective."

The same is the conclusion to which the Tariff Committee of the Government of India had come. As to the actual use of these articles by the different classes of the people, Mr. Sorabjee says as follows:—

"Moreover, foreign cotton-goods imported into India partake of the additional recommendation of having in them something of the nature of articles of luxury. We import annually, in round figures, about 19 crores (say, nineteen millions sterling) worth of foreign cotton-goods. The uniformed may be under the impression that by far the largest portion of this amount represents goods required by the mass of the Indian people for their every-day use. But this is not the case. Of these 19 crores worth of imports of cotton-manufactures of all kinds, 3 crores consist of bleached goods, 3 crores of colored dyed and printed goods, 2½ crores of yarns of all varieties technically known as No. 40s., and upwards, suited for native looms in the preparation of fine cloths, 3 crores of superior descriptions of grey piece-goods, and 7½ crores of other grey cloths. The first four out of these five items give a sum total of 11½ crores of rupees, and any one acquainted with the trade and with the habits of the people, will be able to inform Your Lordship that the goods represented by this sum, with the addition of about one-half the quantity included in the last and remaining item, after undergoing the process of dyeing or printing in the country, are consumed by the higher and the middle classes of people for their daily requirements, and by the poorer classes as articles of occasional use not subject to every-day wear and tear. For their everyday use the mass of the people use very little of foreign manufactured goods. The product of native hand-looms from the cotton of the country has hitherto supplied the wants of the bulk of the population as regards cheap clothing. The competition of the cotton mills of India is more with the indigenous hand-loom than with Manchester, which, owing to want of cheapness, has always been unable, beyond an insignificant portion of its exports, to make a way for its coarse cloths into India."

Thus it is quite clear that the imports affect only the well-to-do classes, nearly all the cloth imported being used by them and not by the very poor. As regards the protective character of the duties, the question is further cleared by looking at our imports.

"What do we now find to be the actual evidence of exports and imports of these cotton goods? The table below will show this :—

Imports and exports Value of Merchandise and of English Piece-goods from 1866-67 *to* 1885-86.

Years.	Value of Imports (Exclusive of Government Stores and of Treasure).	
	Total value of imports.	English Piece-goods imported (cotton).
	Rs.	Rs.
1866-67 (11 months)	29,01,47,413	12,52,41,060
1867-68...	35,66,43,206	14,99,39,174
1868 69...	35,93,13,740	16,07,25,505
1869-70...	32,87,96,432	13,55,58,462
1870-71...	33,34,82,462	15,64,48,675
1871-72...	30,81,07,756	15,00,99,805
1872-73...	30,47,30,694	14,54,57,722
1873-74...	31,62,84,972	15,10,48,968
1874-75...	34,64,52,622	16,21,77,602
1875 76...	37,11,26,672	16,25,94,615
1876-77...	35,36,71,766	15,82,94,015
1877 78...	39,32,60,080	17,10,27,751
1878-79...	36,56,61,947	13,93,75,110
1879-80...	39,74,21,662	16,72,33,522
1880-81...	50,30,88,343	22,63,86,416
1881-82...	46,99,20,842	20,57,07,239
1882-83...	50,00,30,405	21,18,17,652
1883-84...	52,70,38,912	21,39,69,074
1884-85...	53,14,93,110	20,90,80,516
1885 86 (eight months).. ...	33,24,01,787	13,11,73,364

Years.	Value of Exports (Exclusive of Treasure and Government Stores).	
	Total exports (Indian produce).	Piece-goods, Indian (cotton).
	Rs.	Rs.
1866-67 (11 months)	40,77,39,592	59,51,059
1867-68...	49,59,66,646	67,20,168
1868-69...	51,67,62,321	57,25,792
1869-70...	50,67,95,443	23,85,260
1870-71...	53,55,16,812	25,42,369
1871-72...	61,69,72,262	27,21,590
1872-73...	53,44,91,833	30,50,033
1873-74...	53,11,44,275	38,49,371
1874-75...	54,50,10,909	35,38,217
1875-76...	56,21,22,438	39,19,860
1876-77...	58,93,00,693	43,37,477
1877-78...	63,14,35,332	44,22,857
1878-79...	58,70,79,285	47,93,389
1879-80...	64,95,08,331	48,68,994
1880-81...	71,97,40,678	58,50,443
1881-82...	79,25,52,431	59,98,600
1882-83...	80,59,81,554	72,93,868
1883-84...	85,08,57,205	89,56,600
1884-85...	80,31,32,079	86,92,894
1885-86 (eight months).. ...	48,66,22,450	57,21,189

Further I beg to append a statement* in regard to piece-goods

* *Statement of Imports of Piece-goods (grey, bleached, colored and printed) and of yarns (grey and dyed) into Bombay, Calcutta, and Madras from the year* 1880 *to* 1884, *both inclusive.*

Piece-goods.	1880.	1881.	1882.	1883.	1884.	Total.
Calcutta.						
Grey	705,200,000	701,200,000	653,000,000	615,300,000	667,000,000	
Bleached.. ...	150,000,000	155,100,000	117,000,000	161,400,000	129,000,000	
Colored... ...	80,400,000	62,300,000	78,000,000	61,800,000	70,500,000	
Printed... ...	75,200,000	38,800,000	35,500,000	41,800,000	31,800,000	
Total...	1,010,800,000	957,400,000	883,500,000	880,300,000	898,300,000	
Bombay.						
Grey	323,000,000	330,700,000	300,000,000	290,000,000	307,500,000	
Bleached.. ...	99,500,000	120,200,000	83,200,000	138,500,000	103,600,000	
Colored... ...	49,000,000	41,400,000	47,200,000	52,600,000	67,500,000	
Printed... ...	61,500,000	52,800,000	70,100,000	90,200,000	90,000,000	
Total...	533,000,000	545,100,000	500,050,000	571,300,000	568,600,000	
Madras.						
Grey	40,000,000	47,400,000	59,400,000	58,700,000	67,400,000	
Bleached.. ...	8,100,000	13,300,000	15,500,000	23,700,000	16,200,000	
Colored	9,600,000	10,200,000	11,200,000	11,300,000	20,900,000	
Printed... ...	11,200,000	11,400,000	20,200,000	14,000,000	16,400,000	
Total...	68,900,000	82,300,000	106,300,000	107,700,000	120,900,000	
Grand total.	1,612,700,000	1,584,800,000	1,490,300,000	1,559,300,000	1,587,800,000	

alone and yarn for 1880 to 1884, made out for me last week by a leading merchant in Bombay, from which it appears that the annual rate of increase in the import-trade of piece-goods and yarns into

Yarns.	1880.	1881.	1882.	1883.	1884,	Total.
Calcutta.						
Grey	8,600,000	8,047,080	9,450,000	8 810,000	8,570,000	
Dyed	8,000,000	5,553,000	5,330,000	5,450,000	6,740,000	
Total...	16,600,000	13,600,000	14,780,000	13,760,000	15,310,000	
Bombay.						
Grey	7,770,000	8,500,000	7,743,000	10,000,000	8,000 000	
Dyed	5,350,000	3,822,000	4,275,000	6,100,000	6 300,000	
Total...	13,050,000	12,322,000	12,018,000	16,100,000	14,300 000	
Madras.						
Grey	8,000,000	8,300,000	10,600,000	7,200,000	9,700,000	
Dyed	4,100,000	2,800,000	2,374,000	3,800,000	3,300 000	
Total...	12,100,000	11,100,000	12,974,000	11,000,000	13,000,000	
Grand total.	41,750,000	37,022,000	39,772,000	40,860,000	42,610,000	

Bombay, Calcutta and Madras continued un-interruptedly until the year 1880; for in the year 1873, the entire import for the three presidencies was 1,071,685,753 yards of goods and 28,778,179 lbs. of yarn, while in the year 1880 it was 1,612,700,000 yards of goods and 41,750,000 lbs. of yarn, thus shewing that from 1849 to 1880 there has been a continued increase in the imports. It was from March, 1882, that the import-duties upon goods and yarns was altogether removed, and instead of the imports increasing, as we may naturally expect if the protection theory were correct, they have remained stationary except in the case of Madras, where a slight increase is perceptible; but taking the total of all the three Presidencies for each year the imports fall short of what they were in 1880; and that, too, in spite of the enormous increase in railway-communication throughout India and the large increase in its population. Besides it will be observed that the rates ruling for piece-goods and yarns in 1880 were higher than they were in 1884, shewing thereby that the consumption of foreign goods in India did not increase by removal of the duty. It ought, at the same time, to be noticed that the consumption of local spinnings and manufactures did not also increase during the same period, and were it not for the unexpected and large offtake of the local mills' yarn for China, the serious losses suffered by the local mills with rare exceptions, during the last five years, would have made the position of mill-industry very unsound. It thus follows that the removal of duty has only deprived India of a legitimate source of revenue, while it has not secured the objects for which the sacrifice was apparently made.

The true end of all taxation, whether direct or indirect, is, I take it, purely fiscal, and duty should be imposed for revenue-purposes only. Articles of luxury are taxed in all civilized countries for revenue purposes, while all other articles save raw materials are lightly taxed. The import-duty on piece-goods, if levied to meet the present wants, would not amount to even half an anna a head. Thus the average annual imports of merchandise into India for the last three years ending March, 1885, average about 53 crores rupees, and if a duty of 1¼ per cent. only was levied on this import, it would yield 66 lakhs of rupees to Government, which would be at a rate under half an anna per head on the present population of 25 crores, if it fell on the masses; but I submit this does not; it is.

chiefly paid, as Mr. Sorabjee Bengali has shown, by the higher classes. Besides, this is a tax which will reach the population of Native States, who receive the benefits of the British rule as we do without contributing anything towards its expenses. This item of indirect taxation is a better way of raising revenue for Imperial purposes than direct taxation like the income-tax, which, in India particularly, is obnoxious to the people. A protective duty is indeed injurious to free trade, but from the statements of imports it will be apparent that the import-duty in India was not protective before, and cannot even now subserve such a purpose for many obvious reasons. It was levied to enable the Government to carry on the machinery of the administration. It was paid without demur and at the least possible expense in collection as compared with any other mode of taxation. If England, which lays down broad principles of free trade and insists upon their being observed by India, imposes exorbitant duties on foreign goods for revenue-purposes whenever necessary, why should not India, under similar circumstances, be permitted to do the same, and particularly when the tax is merely a nominal one, and yet affords a good help to the revenue; and when, as Mr. Sorabjee Bengalee has distinctly proved, it does not touch the poor, and chiefly falls on the well-to-do classes?

In the face of these facts I am sorry this tax was not availed of as recommended by the Madras Chamber of Commerce; and I cannot understand the recommendation to extend the operation of the license-tax in the form of an income-tax. If it were a mere license tax it would be open to the same objections as the existing tax; but this is something more. It is an income-tax in the case of all whose incomes are above Rs. 2,000. The history of this tax has been so often repeated in this Council that I will not now enter into it. All I have to say is that it is still open to the remarks which have been submitted in this Council by Messrs. Inglis, Robinson, Cockerell and others on the evidence before them; and I can only hope that such a tax will only be resorted to on occasions of the greatest urgency and necessity. The difficulties of working such a tax (as I might safely say also from my own little experience in working it) are very great; and I shall only add my humble voice to those that have gone before me in imploring the Government not

to insert it hereafter in their Budget as an ordinary source of revenue. It presses hard on the honest, and its effects are demoralizing.

There is one more subject on which I have to say a few words before I conclude.

Your Lordship made an appeal to the individual members of this Council, which (speaking for myself) was hardly necessary under the circumstances in which it was made. When the subject of a pure license-tax was discussed in 1878 in Bombay, I voted against it on the ground of its one-sidedness. That feature is absent on this occasion; but the symmetry of the Act is marred by the higher classes being put under an income-tax instead of a license-tax.

I think, however, we shall all rejoice at the removal of all grounds for imposing such a tax, which I expect from the searching inquiry into expenditure which Your Lordship's Government have now resolved upon. I have not been able, within the short time at my disposal, to lay my hands upon all the details which would be necessary to speak authoritatively on this question in detail; but there are several departments in which very large saving has long been overdue. In my own Presidency, the Revenue Survey Department had or ought to have finished its work long ago, and yet from the returns it appears that that department is still of the same strength financially as it was ten years ago. When I remember what Mountstuart Elphinstone said of this department in 1820, I am grieved to see the unnecessary extension of its life and action in those districts where its work has been once completed. The new Forest Department is a young department in its origin; but it has now been working almost like the old Inam Commission. I see a Commission appointed to inquire into it in Bombay; but looking to the evidence that is being taken, it has scarcely touched the surface. Whether it will go beneath, and help to secure an efficient administration without any unnecessary annoyance to the people, remains to be seen. Again, on the basis, or rather the remains, of our Survey Department threatens to come in the Agricultural Department, the total expenditure of which has risen from Rs. 2,45,480 in 1870-71 to Rs. 8,05,718 in 1884-85; and when I closely look into the items constituting this expenditure, and as a landholder and a prac-

tical agriculturist, cast my eyes at our agriculture, I must confess that I view upon the outlay on this department as utterly disproportionate to the results expected to be achieved. For better or worse, India is not a country for large farms and the employment of expensive machinery. As a cultivator of land, I always seek and utilize such information as I can get; but I cannot view with favour such expenditure as is now increasing day by day in this department. Other small but proportionately costly departments will also be required to be pruned down. Above all, there is one great department about which successive Finance Ministers (including the present) have complained year after year, and without a better regulation of which all other reforms, as it seems to me, will be comparatively valueless, and upon which the Government must begin to work; and that is the Military Department and its expenditure without affecting the efficiency of our military forces. The question of the Staff Corps organized in 1861, and the lakhs of rupees it annually adds to our liabilities, was first publicly mooted, if I remember rightly, by Sir Charles Trevelyan in 1870 in London. Sir Charles said that promotion was given to officers in the Staff Corps according to mere length of service without reference to any fixed establishment. What was the result? Here are his words:—

"The consequence of this is that the qualification for the highest rank and the highest rate of pension is simply absolute length of service, without regard either to the public wants or to the relative claims of other officers; and everybody is certain to arrive at the highest rank, and to be entitled to the highest rate of pension, if he holds on during the prescribed term of years. The tune is, 'we are all growing old together.' There will soon be an army of field officers with very few subalterns, and such a retiring list, all at the highest rate of pension, as the world has never seen.

"This, of course, is no mere opinion of mine. In the discussion on the income-tax in the Council of the Governor General in April last, Sir William Mansfield, the Commander-in-Chief, said:—'There is one more point to which I would invite the attention of the Council, that being the growth of non-effective establishments. I need not advert to the statement of General Hannyngton and Colonel Broome beyond uttering the remark that, while those distinguished authori-

ties differ in detail, they are agreed in presenting a picture of future liability which is positively alarming. In short, we are threatened with the serious danger of all our economies in India in the combative force being eventually greatly *more than swallowed up* in the growth of the non-effective expenditure. Under such circumstances a further greater danger might be forced on by public outcry, involving perilous reductions, to meet non-effective charges.' These statements will be found in the Parliamentary paper 'East India Staff Corps, No. 140, of 1869.'

"The Controller-General of Military Expenditure sums up as follow:—'Military history presents no instance of an army so constituted, or of one so costly. But unsatisfactory as is the present financial condition of the Indian army, the future prospect is far worse."

This was said before 1871, only ten years after the formation of the Indian Staff Corps. In 1878-79, it appears there were 1,961 officers in the three Staff Corps, while there were only 245 army appointments which could be held by officers below the rank of Colonel.

Sir A. Colvin himself has complained of certain army expenditure; and we do not yet know what practical benefits we may expect from the Commission which sat at Simla in 1879. Successive Finance Ministers have dwelt upon the heavy expenses in connection with the British army in India. Now that we have got railways all over the country, and the whole continent is enjoying profound peace, Her Majesty's Government ought to help the Government of India in a material way in reducing this expenditure, and if that is done, with the natural increase of our revenues, the Government of India will be able not only to pay its way, but will have no occasion to resort to such unusual taxation.

As regards the Bill itself, there are a few questions which will require serious consideration.

First in regard to taxing house-property. In cities such as Bombay, Calcutta, and the like and in large municipal towns where houses are valued for municipal purposes, I see no difficulty; but to introduce taxation of house-property into the Mufassal generally, in

to villages whether large or small, is a step full of peril and difficulty. There are no standards for valuation there. In thousands of places there is hardly any letting value; and in such cases I see all the dangers of inquisitorial proceedings and arbitrary assessments, and consequent annoyance, which has been so correctly and graphically described in this Council more than once; and to which I fully subscribe. I hope and trust therefore that such assessments may be limited to towns and cities as I have suggested.

Another question is the taxation of the Government securities. I beg that the propriety of this may be reconsidered, as it is a matter which affects public credit.

Yet another question remains; and it is the question of secrecy in regard to income-tax assessments. This is not provided for in this Bill, although it used to be so in the former Acts. All officers, so far as I know, were sworn to secrecy under the law: and so I think they should be. This is a matter on which the Native mercantile community has always laid great stress. The feeling on the subject is very strong, as it is one which touches their mercantile credit and honour, and I hope the question will be attended to when the Bill goes to the Select Committee.

THE INCOME-TAX BILL.

29th January 1886.

(Sir A. Colvin moves that the report of the Select Committee on the Income-tax Bill be considered in detail.)

The Hon'ble Rao Saheb Vishvanath Narayan Mandlik said :—I have noted, in the remarks which I have appended to the Report of the Select Committee, the subjects upon which I differ from the majority of my colleagues and on which I now wish slightly to touch with the permission of Your Lordship. I think the machinery of the Act, so far as it could be improved,—and this I speak from my experience of the first Income-tax Act, in the working of which I had the honour to be associated,—has been improved by the Select Committee, guided by the Hon'ble the Financial Member. But when I have said that, I think I have said nearly all that I can say in favour of the present measure. I had wished that the way had been seen to confine its operation to one or two years, and this on grounds already indicated in the remarks which I submitted to the Council on the first occasion; because, if that had been done, the measure would have been received with greater satisfaction by the people, and I should not have said much on this occasion. I think the remarks which were submitted to the Council by the Hon'ble Mr. Hope raised issues which were very wide, and with some of which I do not propose to deal at this stage. In my speech on the last occasion I simply took for granted the necessity of some new tax as pleaded by the Hon'ble the Financial Minister. I think the country is quite ready to meet his views so far. If the money is wanted for one year or two years, there is the Bill. But beyond that, if you seek to make this a permanent Bill, I say it would be going in the teeth of the past history of the country. I think the remarks which have fallen from the Hon'ble Mr. Steel are just in regard to all measures of direct taxation like that now before us. Some Native Chief may have tried to introduce taxation like this ; but for all that I do say that it is unsuited to the country. Past history is against it, and I should not like to see the introduction of such a tax as this, because it will introduce two currents of economic life amongst the vast

populations of India, [redacted] which ought not to exist; and whatever may be the reason for bringing other races and other classes of people under such measures of taxation, I think the Government of India should prefer those broader lines of financial policy on which I hope the Financial Member will always base his work; and I therefore think it will be better to limit the duration of this tax to the necessities of the occasion and not make it a part of the permanent resources of the empire. The allusion which the Hon'ble Mr. Hope made to the opinion of Mr. Gladstone is, I am sorry to say, not quite pertinent, because it did not refer to the duration of the tax; for, after reference to the volumes of Hansard's Debates, hon'ble members will see that it referred to what may be called the cutting up bit by bit of the scheme or a sort of tinkering of an Income-tax Bill. He did not wish it to be tinkered from time to time, but either to be taken as a whole, or abandoned as a whole. That Mr. Gladstone was strongly opposed to such a tax may be gathered from his condemnation of its character; for he expressed in very clear and decided terms his verdict on that occasion, and further he limited the duration of the tax to only seven definite years. The circumstances and the revenue-systems of England and of India are very different—I may say entirely different. The main sources of our revenue are the land and opium. Into the rest I have no time to go. We had a house-tax, and it has been abolished. The Government of India has wisely remitted a very large number of annoying taxes since 1839 and 1844, and imposed others in their places; and I am quite sure that it can rest its action on its broad and equitable foundations; for, at any moment, when the necessity arises, all classes of the people will cheerfully submit to be taxed to the utmost. There is only one point on which I have to make one or two observations in this place, and that is with reference to the tax on houses. The house-tax is well known in this country, but it is not a tax on the income of the house holder. I say this from my own experience and knowledge of the past history of this country. But in order to verify my conclusions I have referred to various sources of information during the last week, with reference to the house-tax in British India and some of the principal Native States throughout the country and I am satisfied that it is a house-tax and nothing more. It is a tax rather on the value of sites, and the incidence of the tax varies

in some States like Kolhapur, in the Southern Maratha county, from two annas to five rupees. We were referred to the capitation-tax in Burma. It existed in two towns in 1852, and was abolished by our Government, which enacted a revenue-tax instead and limited it in a careful manner by regulating it according to the size of the site. I do not think therefore—and I say it with very great respect—that we ought to fall back now on the policy of an obsolete Native Prince cited to us as a model by which to guide our measures of taxation. We proceed on entirely different principles. The resources from which we derive our revenue can be examined in the broad light of day by the criticisms of an enlightened public, and I do not think the Government of British India has anything to fear if it follows the broad lines of a definite policy in such matters. I have differed in one or two things from the Hon'ble the Financial Member. I think that on the whole, for an emergency like this, we have struck out a pretty good rough and ready machinery, and I am only sorry that he should not be able to see his way to make this present Bill a limited one—I mean limited in its duration—and perhaps see his way to abolish it altogether.

* * * *

(The Hon'ble Mr. Mukerji moves that the words "and in each subsequent year" in S. 4 be omitted.)

The Hon'ble Rao Saheb Vishvanath Narayan Mandlik said:—My Lord,—My remarks on this motion will be brief. I know that I am in a very small minority, but I wish to support the Motion of my hon'ble friend, first because I have some remarks to make, but secondly and principally because it affords to me an opportunity of giving a personal explanation which otherwise, by the rules of this Council, I shall not be able to give. The Hon'ble Mr. Hope has advocated the linking together of two systems of taxation which are inconsistent with each other; the British system is entirely different from that under the Native Princes. A comparison is thus instituted between two incommensurable quantities. There are many excellent Native Princes who do not require any certificate from me. There are others whose own deeds will duly expose them if they are bad; and they will suffer. But this is not the time nor the place to discuss the merits of the revenue-systems of the Native States, and

I deprecated such discussion in the few observations I submitted to this Council. That I honour Mr. Gladstone is not a new thing. About his merits all are agreed. I know he has not been able to repeal the income-tax in 1860, but the income-tax in England (so far as I have been able to verify my references in Hansard) is brought forward before the House of Commons, speaking generally, *pro forma* (if one likes to say so); and it is annually voted upon; so that the analogy of the English practice does not help us here in the least. As regards Mr. Gladstone's opinion about the income-tax, it is decisive. He says on the same occasion as follows:—

"The public feeling for its inequality is a fact most important in itself. The inquisition it entails is a most serious disadvantage, and the frauds to which it leads are an evil which it is not possible to characterise in terms too strong."

With this opinion before me and with the evidence before this Council, and before the Committees of the House of Commons on Indian finance in 1871, 1872, and 1873, I take leave to say that, whilst I shall heartily support a measure which is required by the Government of India for its administration, as the Financial Member now says it is, for a limited period, I shall not be a party to support the proposal for a permanent Act on grounds which will not bear examination; and it is in this view that I said *the* antiquated Prince, and in saying so I meant no slur on him or on any Prince whatever. I am quite prepared to do as I would be done by; and I think I could not place a higher standard of examination or criticism, before this Council, of any question whatsoever.

Rejected.

* * *

(The Hon'ble Mr. Mukerji moves that S. 24 be omitted.)

The Hon'ble Rao Saheb Vishvanath Narayan Mandlik said:—My Lord, in my dissent recorded at the foot of the Select Committee's Report, I had objected to the application of this section except to large towns. I have since made particular inquiries, and I think some of the grounds which my hon'ble friend Babu Peari Mohan has urged are applicable even to very large towns, such as Puna for instance. There are in such towns large buildings which have cost

thousands and even lakhs, and which can be had, some of them, for Rs. 30 or 40 a month. If the first cost of a building is to be taken as a measure for taxation, the new tax will be simply ruinous. Seeing that, in municipalites, taxation is already at too high a figure (something over five crores is, I believe, the total of municipal and local taxation in 1882-83), I think it is very desirable, if the Hon'ble the Financial Member can see his way to do so, to omit this clause altogether, as he has already done in the case of agricultural buildings and the houses of landholders and tenants. And seeing that house-property is already taxed in Bombay at Rs. 15-12 per cent., and under the Calcutta Municipal Act of 1876 the maximunm rates amount to 21 per cent., I think it very desirable that the Financial Department should act on the principle, already recognized in this Bill, that when a man is once taxed he should not be subjected to another tax in the same capacity.

Rejected.

THE GUARDIAN AND WARDS BILL, 1886.

I have gone over the draft and the precis, and note some points which have occurred to me.

Sections 43 to 44 ought, I think, to come before Chapter II.

Section 11 : I think ordinarily there should be only one guardian and one administrator.

Section 12 should be left out : on a proper case of fraud being made the testamentary guardian may be removed but not otherwise.

Section 27 *f*: This must be qualified.

Sections 31 and 32 : If these are retained, I would remove the imprisonment altogether, and limit the fine to a small sum for the first time as a caution and then impose a heavy fine afterwards.

In Section 32 I would say that "if he intentionally removes the minor ward with a view to take him permanently from the Court's jurisdiction, and for improper purposes : " Otherwise the sections will interfere with the ordinary economy of Hindu (or Indian) life.

Section 33 : This should be *expressly* made applicable only to non-testamentary guardians.

Section 15 : clause 2 : This raises a difficult question. The Bombay High Court have held that in such a case no certificate is necessary (Indian Law Report, 3, Bombay 431). They have also held that joint family property is not liable for the debts of a deceased coparcener (Indian Law Reports, 2 Bom. 479 ; see also cases in Bombay High Court Reports, Vol. 11 : I have not got the vol. with me) ; Again :—

" No right vested in any member of a joint Hindu family to a specific share until some act has been done which has the effect of turning the joint ownership into several ownership. This may be done by a mere signification of intention and when a signification of intention has once taken place which has this effect, the share of each member becomes at the same moment several and defined. It is the signification of intention producing concurrently these two results, which enables a member of a Joint Hindu family to dispose of

his share by sale whilst the family still remains joint." (Raghubanand Doss and Sadhu Churn Doss, Markby and Princep J. J.; I. L. Reports, 4 Cal., 42 5, 1878.

This is still good law, and notwithstanding the last Privy Council case about certificates, I think I would leave the Joint Hindu Family system as it is.

If it is going down naturally as is said in some of the papers noted, I would leave it, but there is a large body of authority for not interfering with it.

If a *minor's* 'interest' is being injuriously affected, I would enact provisions for a guardian to enforce separation.

8-3-86.

V. N. MANDLIK.

* * *

12*th March* 1886.

(The Hon'ble Mr. Ilbert moves for leave to introduce the Guardians and Wards Bill.)

The Hon'ble Rao Saheb Vishvanath Narayen Mandlik said :— As the Hon'ble Mr. Ilbert has kindly referred to the part I have taken in going over the draft of this Bill, I wish to say that I think, generally speaking, that its provisions are suitable, and that any difficulties which may present themselves may be further considered in the light of further representations. There is, however, one important point, namely, that of united Hindu families and the guardians of minors who form members of such families. I believe that a recent decision of the Privy Council has introduced some difficulty in the matter of guardians so appointed. I have no doubt that that difficult point will be further considered and suitably provided for when the Bill goes to a Select Committee.

BENGAL, NORTH-WESTERN PROVINCES AND ASSAM CIVIL COURTS BILL.

11*th March* 1887.

(The Hon'ble Mr. Mukarji moves certain amendments.)

The Hon'ble Rao Saheb Vishvanath Narayan Mandlik said :—I am sorry that at this stage of the Bill I do not see my way to accept any of the amendments for which my hon'ble friend contends. If Assam is a backward province, I think these provisions might well have been suggested at an earlier stage, seeing that the Bill had been five years before the Council, when it might have been found desirable to re cast it and divide it if possible into two, applying respectively to the regulation and the non-regulation districts. But to disturb the Bill at this stage seems to me a very impracticable measure, and I therefore regret that I shall not be able to vote for the amendment.

Rejected.

Memorandum in regard to certain improvements suggested by the Hon'ble Mr. Justice Mahmood in the transaction of business in the Allahabad High Court.

Criminal.

All revision cases and references under the Code of Criminal Procedure except the following may be disposed of by a single judge :—

(*a.*) Cases for the confirmation of capital sentence.

(*b.*) Cases for enhancement of sentences.

(*c.*) Cases where Magistrates submit proclamations and notices for confirmation under S. 19 of Reg. XII of 1827.

(*d.*) Appeals for the exercise of the extraordinary jurisdiction of the High Court.

Civil.

The following may be disposed of by a single Judge :—

(*a.*) All second appeals up to the value of Rs. 500 which do not involve questions of land tenures or hereditary offices.

(*b.*) Miscellaneous second appeals arising from execution of decrees.

(*c.*) All miscellaneous applications except those under the extraordinary Civil Jurisdiction of the Court.

In Bombay the registration of appeals under S. 551 of the Code of Civil Procedure is done by a single Judge, whether these are first appeals or second appeals.

Bombay, 23*rd August* 1887.

V. N. MANDLIK.

MISCELLANEOUS SPEECHES.

14th September, 1865.

(Dr. Wilson moves a proposition expressing regret at the death of the Hon'ble Mr. Justice Forbes, at the B. B. R. A. Society.)

Rao Saheb Vishvanath Narayan Mandlik, in seconding the motion, spoke as follows :—I beg to second Dr. Wilson's motion with melancholy pleasure. I had the privilege of knowing the late Mr. Justice Forbes for the last three years. Although my acquaintance therefore was not of long standing, it was enough to convince me that in him we had lost a true statesman of the Mountstuart Elphinstone type. He was a thorough English gentleman in every sense of the term. With the greatest kindness and generosity of nature, he united manly firmness and the highest principles of honour; and it was the striking combination of these qualities that had endeared him to all classes of people in *Saurashtra* and *Gujarashtra* (wherein he was mostly employed), from the noblest Rajput Chief to the meanest peasant. I consider the death of such a man a great calamity to the country; for it is men like the late Mr. Forbes who are the real strength of the British rule in India; whose presence inspires confidence in the justice and faith of the English Government; and whose example encourages the timid, overawes the forward, and preserves the equilibrium of the political machine. Of his labours as an English scholar, it does not become me to speak; but this I must say, that his principal work, the *Ras Mala*, is a great and well-arranged storehouse of the historical and legendary lore of Gujarath and Kathiawar; and his mode of treating the numerous subjects therein embraced, and the variety and fullness of his remarks and illustrations, testify to his great scholarship and deep research, as well as to his exquisite taste and artistic workmanship. He spoke Gujarathi more correctly and with greater elegance than most Europeans whom I have known. He left and often expressed his regret that numbers of native institutions were passing away of which no record was being kept. He was most anxious to preserve

indigenous poetry and annals, as illustrating the manners and customs, the history and antiquities of the country. It is on this account I feel that his loss to the Gujarathi Vernacular Society (of which he was the founder), and to the cause of Gujarathi literature generally, will be very great. Science and philosophy are never so attractive as when they are joined with rank and political eminence. They then get as it were into fashion, and confer numerous and lasting benefits on society. Persons like the late Mr. Forbes are the powerful motive forces which promote a cordial combination of the two great aristocracies of rank and of letters. It was under Mr. Forbes's fostering care that the warlike *Kshatriya*, the speculating *Vaishya*, the literary *Brahmana*, and the adventurous *Parsi*, so cheerfully combined to form the literary body whose guiding spirit has just departed. I trust his mantle will fall on the shoulders of some worthy successor, and that the Society may yet be able to bring out some of those works on which he was engaged. Mr. Forbes'. liberality was princely, and was not regulated by colour or creeds Ever solicitous to seek out and encourage native talent, he was indeed a *Vikramaditya* or *Bhoja Raja* to the poets and bards of Gujarath. Indeed, an example of his unobtrusive beneficence came to my notice only within a few weeks before his death, which we now deplore.

11th February 1867.

(At a public meeting in honour of Sir Bartle Frere.)

Rao Saheb Vishvanath Narayan Mandlik said:—Mr. Chairman and Gentlemen,—I have much pleasure in seconding the resolution which has just beeen proposed by the Rev. Mr. Fletcher. The speakers before me have well-nigh exhausted the subject. The Hon'ble the Advocate General has given a narrative of the career of Sir Bartle Frere. Other speakers have likewise dwelt upon his brilliant achievements. The Rev. Dr. W lson has brought out many old reminiscences and scenes which will fill up the gap in what would otherwise have been almost a bare outline. Now, Sir, when we look to the career of Sir Bartle Frere, one is naturally tempted to ask, how this gentleman, a member of the Bombay Civil Ser-

ivce rose to such a high position of merited distinction. I think those who have closely watched his career will agree with me that the rise of Sir Bartle Frere is due to his vast energy, untiring perseverance, prodigious industry and a wonderful capacity of adapting means to ends. Whether we look at him as an Assistant Collector in the Konkan, or as an Assistant Revenue Commissioner in the Deccan; whether in his post of Commissioner of Sattara, or as the pro-consul of Sind, swaying the affairs of Young Egypt and anxiously watching the keys of India on the Affghan and Belooch frontier; whether we view him as the confidential adviser of Lord Canning or as a Governor of this Presidency, the same capacity of adapting means to ends is to be observed. The Natives of this Presidency have most to thank him for encouraging education. The Public Works Department will also testify to his immense industry and foresight. India has been visited by dire famines during the last few years: first the N. W. Provinces, then Bengal, and lastly, Madras. In Bombay, I would undertake to say that, by the wise and extended organisation of public works, the Government of Sir Bartle Frere (to use the words of an intelligent native gentleman well acquainted with the Public Works Department of Bombay) has, as it were, anticipated the famine, and broke down its severity to a considerable extent, or we should have had a fearful account to give of several parts of this Presidency. Gentlemen, this meeting has assembled to pronounce, what I may venture to call a political verdict on the administration of Sir Bartle Frere. That verdict is unanimous; and it is *success*. To carry this verdict into effect, this assembly proposes to appoint by the resolution which I have the honour of seconding, a Committee which will have the pleasing task of carrying out the objects for which we are assembled here to-day. With these remarks, I beg to second the resolution now placed before the meeting.

14th March 1867.

(At the B. B. R. A. Society on materials for a history of the Mahrattas.)

Rao Saheb Vishvanath Narayan Mandlik said:—I think, Sir, a good deal may be done by searching through the public library of the

ate Rajah of Sattara, if H. H. the Rani Saheb could be induced to show some of the old *Bakhars* (or chronicles), which I believe are to be found in the late Rajah's private library. When I was at Mahabaleshwer last year, I obtained a copy of the life of Ramadasa, the religious preceptor of Sivaji, the founder of the Maratha empire. It contains some anecdotes which may not obtain credence beyond the range of his religious followers; still it is an interesting work, and gives us a view of men and things as they, I believe, existed in Maharashtra more than two hundred years ago, and is therefore worthy of publication. I understand that portions of this narrative, relating to grants of land, &c., can be verified by other incontestable records which exist to this day. I am sorry the MSS. in Sir Bartle Frere's library were lost, along with his whole collection, in the sea in its passage between Calcutta and Bombay. There may be some MSS. in the library of the late Nana Phadanavis at Menawli; but there are not many, I believe. At the suggestion of Sir Bartle Frere, I spoke, two years ago, to the son of the late Phadanavisa, in order to write a complete memoir of the deceased minister; but I was informed that all the information the family possessed had already been made over to Captain Macdonald when he wrote his life. But, above all these, the best place to look for the sources of Maratha History is the Poona Duftur, which contains a mass of papers which ought to be indexed and published. I believe diaries by the old Maratha Sirdars exist. They may be meagre, and not so interesting as the diaries of abler and more literary men; still they would be very valuable to have. Some years ago a committee was appointed to report on the advisability, I believe, of making over a portion of the Poona Duftur to the Educational Department. Mr. Krishna Shastri Chiplunkar, Mr. R. G. Bhandarkar, M. A, and Rao Saheb Bhaskar Damodar were the members. But I believe the project fell through. Much of what lies uselessly in the mass of papers now in the old Duftur would, if brought to light, be of use to all. I would therefore suggest the advisability of forming a small compact sub-committee of two or three members, who would work on a systematic plan, and give us some works to illustrate the Maratha period.

13th February 1868.

(Moves a vote of thanks to Mr. Justice Newton for an exposition of 'Ratna Mala'.)

Rao Saheb Vishwanath Narayan Mandlik, said—I have much pleasure in moving a vote of thanks to our President, the Honourable Mr. Justice Newton, for the luminous exposition with which he has favoured us to-day, of the excellent translation of the "Ratna Mala," left by the late Mr. A. Kinloch Forbes. It is not merely for the historical information which it gives that this work is valuable, but also for the light it throws on the manners and customs of the people whose deeds it professes to narrate. The life-like picture of the good and bad omens, the auspicious and inauspicious signs which are supposed to foretell the events that are to befall us, is applicable to many parts of India at the present day. Even in Bombay at least, fifty out of every hundred persons, belonging to the native community would still consider these omens in the same light as they were by the bard who composed the "Ratna Mala." The sight of a widow, of a man without a mark on his forehead, of a cat, of a crow, of the blue jay, and similar natural objects, is still considered by the ignorant, as inauspicious. These facts might be put in notes when such works are sent to the press. They would be very valuable to outsiders in judging of the inner life of the people of this country. The memoirs of the Pant Pratinidhi and the Chiefs of Jat and Phaltan, which were submitted by the Honourable President to-day, are valuable so far as they go. But it would be desirable, however, to get hold of the literary and miscellaneous portion of the Poona Duftar, which is lying useless, and can be turned to some account by the Society. Some years ago a project was suggested by the late Mr. Howard, but which unfortunately fell through. The strictly political papers might be easily separated and the rest might, with great advantage, be made over to this Society. Unfortunately neither Dr. Wilson nor Dr. Bhau Daji is present here to day, but in their absence I have much pleasure in moving—"That the best thanks of the Society are due to the Honourable Mr. Justice Newton for his luminous exposition of the late Mr. Alexander Kinloch Forbes' able and interesting translation of the "Ratna Mala."

12th November 1868.

(At the B. B. R. A. Society, Seconds a vote of thanks to Dr. Bhau Daji for his paper on Hemadri.)

Rao Saheb Vishvanath Narayan Mandlik said:—I have much pleasure in seconding the proposition of Dr. Buhler that the Society offer its best thanks to Dr. Bhau Daji for the very able and interesting paper he has favoured us with to-day. The works of Hemadri are not cited as authorities on the Vyavahara (or civil law) as enforced in the Courts of this presidency; but they are in great repute amongst the people, and their publication will serve greatly in settling doubtful and contested points of law, as observed by the various schools in India. At the last meeting Dr. Buhler gave us a paper on the date of Vidnyaneshvara, and the present communication by Dr. Bhau Daji I take to be merely an earnest of what he has in store for our Society,—a small instalment of what is due to us from the learned Vice-President.

* * *

Mr. Martin Wood inquired in regard to the note on Mukundraj whether the Marathi language was settled at the date when Mukundraj wrote.

Rao Saheb Vishvanath Narayan Mandlik said,—I think it was. The works of this author prove it in some measure; and the works of Dnyaneshwar, who followed Mukundraj, confirm this opinion. Dnyaneshwar's great work in Marathi is his learned and elaborate commentary on the celebrated peom, the Bhagavatgita, which gives us Shaka year 1272 (A. C. 1350), as the one when it was composed; so that there is no doubt whatever as to the date of this author. From this work and the works of Mukundraj, there can be no doubt that the Marathi language was well settled at that time.

12th April 1869.

(At the B. B. R. A. Society, Seconds Mr. Justice Tucker's motion that Mr. Justice Newton be elected an Honorary Member of the Society.)

Rao Saheb Vishwanath Narayan Mandlik said:—Mr. Chairman, I have much pleasure in seconding the motion just made by the

Honourable Mr. Tucker. Previous speakers have anticipated some of the remarks which I might have made on the motion before you. The Marathi community of the capital of the Deccan will lose in Mr. Newton a good friend. We have at this meeting more than one gentleman connected with the Poona agency. But I can say that the race of men like Mr. Newton, who had seen and known the old Sirdars like the late Bala Saheb Raste—not the phantoms who are to be seen now-a-days at the Durbars—is passing away. With a different education and moral standard for his guidance, he could yet appreciate these men of an entirely different type, and take an earnest interest in their welfare; and the Society's records will show the interest he has taken in collecting materials throwing light on their life and history. Of a deeply religious turn of mind Mr. Newton has always been very catholic in his views of people of other creeds and nations. Unhappily the distance between the different races in India is very great; but the presence of such minds as Mr. Newton's help to narrow the chasm that unfortunately exists. One of the greatest benefits which India and England can confer upon each other is to bring together the leading minds of the two nations into an ennobling contact; and it is in this aspect also that the loss of our President's services will be greatly felt. It is but just that we should mark our sense of this loss; and I have therefore much pleasure in seconding Mr. Tucker's proposition.

4th March 1876.

(Moves a vote of thanks to Professor Monier Williams at a meeting in the Town Hall, for his proposal to form an Indian Institute at Oxford.)

The Honourable Rao Saheb V. N. Mandlik said that he begged to propose a vote of the sincere thanks of the meeting to Professor Williams for his interesting, exhaustive, and able address. He did so with pleasure, more in response to the call to the native audience present, than as one capable of doing justice to the important subject which had been placed with such ability before them. He would not go so far as to say that he coincided with the scheme which had been placed before them for their acceptance in all its bearings, but he sympathized entirely with the object Professor Monier Williams had in view. (Hear, hear.) He agreed with his desire to promote *gamanâ-gamana* between the two countries. (Hear, hear.) The address with which they had been favoured that day was very instructive and suggestive; indeed, he might call it the epitome of the results of education in the Presidency of Bombay for twenty-five years, and of fifty years, in the Presidency of Bengal. They had just been told that five hundred students from Calcutta University had signed a certain memorial, which fact showed the advance made by the University of the Bengal Presidency; but he made bold to assert that that University had made no further advance than had Bombay University in earnestness and desire for progress, considering the appliances which had been placed within its reach. If the progress here was somewhat slower than in Bengal, it was certainly more calculated to make each one more satisfied with his position in life, and tended more to promote a desire to seek a gradual amelioration of a man's own position, and the position of those around him. It was for the promotion of a communication between mind and mind, of the *gamaná-gamana*, as the lecturer had described it, that he (the speaker) would desire the proposed movement to be successful. He hoped, therefore, that, before the meeting separated, some resolution would be proposed that would give practical encouragement to Professor Williams by the citizens of Bombay. (Cheers.)

(At a public meeting of the inhabitants of Bombay, held in the Framjee Cowasjee Hall on 18th April 1876, to protest against the Revenue Jurisdiction Bill, and ask the Secretary of State not to sanction it.)

The Hon. Rao Saheb Vishvanath N. Mandlik spoke in support of the memorial to Lord Salisbury. He said—" We are here to-day to decide upon a step which has been, I think, approved by the whole public voice of Western India. After what has been said to you by previous speakers, I shall make but few remarks. Looking over the speeches of the Hon. Messrs. Hope and Hobhouse, I don't think a few minutes' address could exhaustively give you a reply to every one of the remarks in detail ; but I trust the meeting will not therefore be under the impression that there is one assertion throughout which cannot be satisfactorily replied to. The first assertion of Mr. Hope in the Legislative Council is that the measure has been misrepresented and misunderstood. If that is so, I should like to ask whose fault it has been. Have either the people the High Court, or the Government of Bombay misrepresented the measure ? I, for my part, do not know (for the papers have not yet been published) what the Government of Bombay have said in regard to the bill ; but I trust the condition of the people over whom they have ruled for the last 50 years has shown them that the bill is one that is not wanted in the interests of good government, and the contentment and peace of this Presidency. (Here, hear.) Mr. Hope speaks of the convenience and inconvenience of Revenue officers as if that was the grand point to which all laws must tend,—at all events, all Revenue laws ; but however important the collection of revenue may be—and it is very important,—it cannot be said that any inconvenience to the officers who collect that revenue, or rather their occasional inconvenience, is of much greater importance than a violation of the rights of those from whom the revenue is collected. (Hear, hear.) It is this phase of the question, sir, that invests this movement with particular interest. I am sorry I differ from Mr. Maclean as to the construction to be placed on the particular section* upon which the jurisdiction of

* The section referred to is Section IX. Reg, XVII. of 1827, and runs as follows:—

Section IX.—Clause 1st.—The Collector's decision upon any ques

the Civil Courts rests ; but I do say that it is only a limited jurisdiction, and is not so wide as Mr. Hope has imputed to me and to my co-petitioners in reference to what we have said when we were so presumptuous as to appeal against this bill on two occasions to the Legislative Council of the Viceroy. Mr. Hope tries to make out what he calls a conflict of authority. I regret that the petitioners who went up to the Viceroy were no authorities at all ; but the right authorities, who were the constitutional exponents of the law gave forth no uncertain sound. That they have commented in what may be called an extra judicial mode may perhaps be due to some fact with which I am not acquainted. It may be that they had no opportunity, officially, of communicating their views, such views not having been invited in due course ; but whether judicially or extrajudicially, we have now the views of the High Court before us, and they are entirely in favour of the law as it stands. (Hear, hear). Mr. Hope says that the bill of 1875 has been considerably modified from the draft as it stood in 1873. The question is—has it been liberally modified, or has it been modified, at all in any considerable degree ? I take leave to say it has not been so modified, and the only modification is a mere trifle. The modification consists in giving the Courts of Law authority to look into cases founded on British *sunnuds** so

---

tion, arising out of the provisions of the preceding sections shall, in the first instance, be obeyed and acted upon as the rule.

Clause 2nd.—But if any person should deem himself aggrieved by any such decision, he may either present to the Collector a petition addressed to Government, paying for redress, or may file an action against the Collector in the Civil Court, under the ordinary rules, or he may pursue both methods at the same time.

Clause 3rd.—The Collector shall forward to Government, without delay, any petition presented to him under the preceding clause ; but the reference to Government shall have no effect upon any suit instituted in the Civil Court.

This to be read along with the previous sections, and is not capable of the construction which the promoters of the new Act would put upon it.

* This is what he says in Council :—"Whenever a case or a claim rested upon an express enactment or the provisions of a sunnud, or upon a deed or a judgment, or other specific basis, the Civil Court should decide ; but where a case turned upon a tenure or a custom, or any

that really nine-tenth of the cases in this Presidency, founded on usages and customary tenures, and old grants where we have the unhappy 30 years' settlement will be excluded. (Hear, hear). Besides, over and above the cases excluded by the bill of 1873, a still larger class has been excluded by the present measure as it now stands, and a cursory perusal of the leading sections of this measure will convince any impartial judge of the correctness of my observations. Mr. Hope then makes an observation about *Wattan* property; and I can say that his assertion about our petition again is not correct. *Wattan* property is limited to the family to which it belongs, but they can use it like all other private property, and any Collector who might misapply the proceeds of such property could formerly be sued in a Civil Court, and Collectors have been so sued, as the printed reports of the High Court will show.* The only portion of this property which is not liable to be taken into a Civil Court is what is paid to the officiators† and as to that the petitioners were quite clear in their statement. The next assertion of Mr. Hope is in regard to the relative circumstances of India and England. That has been met by the European friends who have preceded me, and it is a matter upon which I could not naturally expatiate; because the English law is a vast subject, and we only having received the bill as finally passed within the last ten days, can scarcely hope to grapple with all its intricacies and compare them with those of the English law at such short notice. However, we have not the slightest objection to being levelled upto the level of the landed proprietors in England (laughter and applause), if Mr. Hope, or the Council in which he sits, is disposed to do so; but we do protest against being levelled down from the height which we have occupied, not only

matter more or less of a technical nature, the Revenue Courts should deal with it." Mr. Hope should have said, not *a* sunnud, but a British sunnud; (see 4 provisoes i. and j.) So that, the concession to which he points out is no concession at all; for, as I have said before, nine-tenth of the cases are under old grants of customary tenures; so that Mr. Hope's statement is absolutely misleading.

Amongst others see *Rangoba Naik bin Raghoba vs. the Collector of Ratnagherry*, 8 Bombay High Court Reports (Appellate Civil Jurisdiction) 109.

† See Section 13 of Act XI. of 1843, and Bombay Act III. of 1874, Section 12.

from the time of Mountstuart Elphinstone, but from 1799 (hear, hear) : for the older districts had a law of their own, which Mountstuart Elphinstone consolidated when he made and promulgated the Code of 1827. Whilst upon this subject, I will dwell on one part of Mr. Hobhouse's speech which refers to this question. Mr. Hobhouse tries to show that the older provinces of Bombay are an unduly favoured country, and that the jurisprudence of Mountstuart Elphinstone is singularly at fault in this case. Now, what are the facts? Mountstuart Elphinstone enacted a general law and a special law in 1827, side by side,—one law for the older districts, which had been a part of the British Empire for more than 29 years, and another law for the districts which were just then being settled, and which were placed under the exceptional law of 1827. If Mountstuart Elphinstone had thought it proper that the older districts should not have a more favourable law, what would have been more easy than for him to have made one general law for the entire country, instead of saying the general law for the empire shall be this, viz. :—Regulation 17 of 1827, and the exceptional law for what are called the Sirdar districts—namely, the Deccan and Khandeish. His making the exception for the new districts shows what he contemplated, at no distant period, he and his successors abrogating that exceptional law and having one law for the whole Western India. Of this there are various proofs on the records of those times ; and accordingly the Revenue Courts have been gradually abolished, and the Civil Courts of this Presidency have been strengthened on the principles originally enunciated by Mountstuart Elphinstone. This is proved by the history of our legislation, which is directly opposed to the theory now propounded in the year of grace 1876. For, as a matter of fact, the jurisdiction of the Revenue Courts in the Bombay Presidency has been gradually curtailed since 1827, until their final abolition in 1866 under the guidance of Mr. (now Sir Barrow) Ellis. Anybody, who chooses to see, can satisfy himself by referring to Act XVI. of 1838 and Bombay Act II. of 1866. In 1838 the cognizance of tenure suits was transferred to the Civil Courts, and in 1866 the last remnant of the civil jurisdiction possessed by the Revenue Courts was swept away and the courts of Adawlat or Civil Courts were left completely free to dispense justice in all causes whatsoever. Sir Barrow Ellis, in introducing this last Act, spoke as follows :—"When the judicial

"courts were first established, it was supposed that Revenue officers "would be better able to dispose of the class of cases described in "Chapter VIII. Regulation XVII. of 1827 than the Civil Courts. "It was felt that the latter Courts, from their want of local know- "ledge, would not be able to extend that protection to the cultivating "classes of which the latter, from their ignorance, stood in special "need. The ryots, however, were now much improved in their social "position, and were quite able to take care of their own rights. The "character of the Civil Courts had also been raised; and it was the "general opinion that they could be safely invested with jurisdiction "in cases between the ryots and superior holder. The present Bill "would not affect the Bombay Act V. of 1864, nor the Survey and "Settlement Act."

Again, look at the Bombay Courts Act, which provides that all suits against Government officers, of whom necessarily a large majority are Revenue officers, shall be taken before District Courts, presided over necessarily, by Covenanted Civil Judges and Assistant Judges. Such is not the case in other parts of India, and that was alluded to when this bill was passed in the Council of the Viceroy. There is another reason why the evil will not be experienced to such an extent in Bengal, because Bengal was blessed with the settlement of Lord Cornwallis. There, the 30 years' settlement does not come round once in a generation, when people's titles can be reopened, if Revenue officers have a chance of doing so. I don't condemn those officers, who, as custodians of Her Majesty's revenue, would be quite right to interfere in every case where they thought the revenue was in danger, but whilst they should have that right, I do say there should be the protection to the subject of invoking the jurisdiction of the Law Courts, which alone can dispassionately and judicially consider all such questions. (Applause.) Mr. Hope, I think, speaks rather too strongly for his cause when he condemns our whole judicial machinery. He says:—Speaking of an imaginary trial, he says, suppose we take a revenue case (I am quoting from his own speech) "we should find the Courts and the counsel on both sides, striving "with great zeal, honesty and ability, to make out what the whole "thing was about. We might find dictionaries of doubtful authority "consulted as to the meaning of revenue terms; we should probably

"find one side or the other pinned by the Court to ill-weighed state-
"ments made by individual witnesses. Old printed reports about
"one thing might be supposed to apply to another really quite
"different. We might also find a whole mass of papers and accounts,
"perhaps some four or five hundred, handed over to the translators
"down at the Presidency—papers in regard to some of which the
"entire value depended upon some idiomatic term of the native
"language, and the result of such translation might be somewhat
"similar to what might be that of an English character or title-deed
"some two hundred years old, when rendered into Hindustanee by
"a European." According to Mr. Hope, it amounts to this, that our Courts, our interpreters, our Law of Evidence, and our whole judicial procedure from top to bottom is wrong, and that the Revenue officer, deciding, I presume, by intuition—for I don't know the rules by which he would be guided—would come to a right decision by a rule which has not been propounded along with the Revenue Jurisdiction Act. You will recollect, gentlemen, that although the term Revenue Courts has been used in the debates at Calcutta, there are no such courts actually at this time throughout the whole of the Bombay Presidency. No doubt we have Mamla dars' Courts dealing with Possessory suits in a summary way, but they are no more Revenue Courts than are other authorites, Revenue and Magisterial, throughout the Bombay Presidency. As regards to the dictionaries to which Mr. Hope alludes, most of them have been compiled with a good deal of research Molesworth's dictionary has been compiled with as great care as any distinctionary that I know of. At all events the country would rather be guided by Molesworth, and the trained translators who have spent their lives in the work of interpretation and translation than by the chance rendering which any Revenue officer, in prosecuting any particular case, may at the time put upon any particular word. (Here, hear.) Then Mr. Hope, in speaking of the Kabilpur case, talks of the chain of Revenue officers, beginning with the Assistant Collector, and if Mr. Hope's doctrine is to prevail, I fear the Indian landholder will have a very poor chance in standing against the heaviness of the chain; but I have no doubt that very few Revenue officers would maintain the doctrine which has been initiated by Mr. Hope. Even their Lordships in the Privy Council deciding cases like the Burdwan *Lakhiraj* case, in 4th

Moore's Reports, will have to give way, if this doctrine of the heaviness of the Revenue chain is to prevail! As regards the binding down of witnesses to statements, surely all gentlemen here must have had more or less experience of trials in Courts; and can it be said that if a witness makes a statement, however unfortunate it may be,, he should be allowed to withdraw that statement and improve upon it? The very essence of the law of evidence is that the statement must be taken as it is,—corrected by cross-examination and strengthened, perhaps, by re-examination; but we shall have to unlearn the law entirely if we go upon the principle enunciated by Mr. Hope.* Aother point to which I will allude is that there are some letters of Col. Francis that have been referred to by Mr. Hobhouse. So far as I can discover from the passages quoted, those letters refer to one particular district which was badly surveyed. If Colonel

---

* Thus Mr. Hobhouse speaks of the unfortunate *Wamanaji's* case. But if he had read Colonel Francis' own deposition on oath in another case where he states that the assessment is a fifth or a sixth of the gross-produce, he will scarcely think *Wamanaji* to have been so unreasonable in bringing his suit which again had fair ground for support in Hindu Law. Mr. Hobhouse draws a veil on this Wamanaji case which was the foundation of the Act when it was introduced in 1873, and which has been now found not to support what it was then thought it would support But Mr. Hobhouse read extracts from a letter from Colonel Francis, and tried to make out that there are certain technical detail's which are peculiarly unfitted to go before Courts of Law. But if Mr. Hobhouse read the records of those cases, some of which I can identify, he will find that all talk about revenue details is mere moonshine. Even if all those cases may have been lost, they have served to expose the irregular and illegal procedure of the Survey Department which has wasted lacs of rupees in going over two Talukas, S. Konkan. It was admitted in some of those cases that land had been taxed without being measured at all save by guess: and however unpalatable the exposure may have been to Colonel Francis, it saved public money and did public good. Officers like Mr. Havelock, Mr. E. T. Candy, Mr. Elphinstone are witnesses to the truth of what I say; and no amount of statements which Colonel Francis may make about rice and rice-straw, can avail in establishing a proposition that a prosecutor can be a proper judge in the case which he seeks to prosecute. No doubt some new engineer may invent a steam-engine without a safety-valve; but until that is done, the proposition to work our railway and other engines without that contrivance would be about as wise as to dispense with the moral safety-valve of our Law Courts.

Francis had admitted that the land he wrote about had not been surveyed at all and yet had been assessed, he would have been nearer the mark. (Hear, hear.) I have cases and can produce them at any time; and they are on the records of the High Court. It was because the Courts of Law were open to the people that irregularities have been exposed, and lacs of rupees have been saved by those timely exposures. Mr. Hobhouse says that the value of the *sunnuds* or grants is very little, and that a title which may be expressed by the words "so long as the sun or moon may last" would be extinct by the death of the grantor or the grantee. I have heard that argued before by Mr. R. D. Mangles in the Mysore case, but I think Mr. Hobhouse will excuse me if I draw his attention to the decisions of the Bombay High Court and of the late Sudder Court that these words should be held to mean simply what they say. I am surprised at the Hon'ble Mr. Hobhouse speaking in the fashion he does in regard to the customs of native rulers. No doubt under bad native rulers, as under bad rulers of all nations, things that ought to be respected have been outraged; but to say that the expression "as long as the sun and the moon endure" was treated as conferring a title that could be extinct by the death of either the grantor or the grantee, is to say something to which the whole history of the country gives a complete contradiction. As Mr. Candy points out (Bombay Government Selections, No. 134 New Series,) that "however arbitrary native governments may have been, it will always be found that sunnuds were respected." (Hear, hear.) In conclusion, I confidently appeal to the people of England, and with them the decision rests, and to the Secretary of State, whom I take to be their exponent, and I calmly await their reply. (Applause.)

BEFORE THE BOMBAY BRANCH, EAST INDIA ASSOCIATION.

1877.

(Discussion on Mr. Martin Wood's paper on the Industrial progress in India.)

The Honourable Rao Saheb Vishwanath Narayen Mandlik, C. S. I., said that he was glad to see such a practical gentleman preside on the occasion. There was a great deal of misconception

as to the object and doings of the East India Association. The industrial improvemeni of the country was as much at heart to the body of the Association as its social and political changes. The best thing for the permanent elevation of the country and its people was to cultivate the several industrial branches now existing in the country. He could not speak in flattering terms of the new Academicians, who had neither the energy nor the perseverance to elevate their less instructed brethren from the depth of ignorance. The study of the works of Macaulay, Addison, and such other authors only would scarcely prepare them to do service to their country, unless they descended into, as it were, the social and industrial gutters of society. He was of opinion that people indulging in roses, lavender, and fashions could not elevate their country. It must be a man's ambition to belong to an industrial class. Even the making of a common needle or a smoking pipe could be elevated into a profession which might be called honourable and at the same time prove very lucrative. The people of this country had, fortunately, at their disposal different mines, if they were to examine the various soils of this extensive country. The pioneers of geological survey had laid down that there were extensive iron and coal mines in Central India, and it was, therefore, for her people to devote themselves towards the utilization of those products. Literary education served good for the groundwork, but scientific knowledge, thought the speaker, was necessary for the utilization of the vast and varied mines of product that were available in this country. The honourable speaker then asked to be excused from further addressing the meeting, as his labours at the Legislative Council the whole of the day had begun to tell on his health.

11th August 1877.

(Proposes the appointment of a Committee at a public meeting called to raise a memorial to the second Sir Jamsetji Jejeebhoy Bart. C. S. I.)

The Honourable Mr. Mandlik said he might address the meeting either as a representative, thanking the Sir Jamsetjee family on behalf of the Mahratta students of the Deccan College, splendidly built owing to the munificence of the late Baronet; or as the spokes-

man of the Elphinstone College students, of whose endowments he was was a trustee; or still better, simply as a private citizen belonging to another community, and a community which, as his Excellency had reminded the Parsees present, first gave them shelter in this land which had always been cosmopolitan. Sir Jamsetjee was a prominent member of the native community, in fact he might have been called the soul of Bombay. (Hear, hear). He was reminded of a circumstance which occurred after the death of another worthy citizen of Bombay, Dr. Wilson, and he might apply to the late Sir Jamsetjee what he said on the occasion of a meeting to prepetuate the memory of Dr. Wilson. Taking Sir Jamsetjee as one of the social leaders of the Parsee community, he was in a wider sense, a much broader sense, one of those social bridges that bridge the gulf between the different sections which are necessarily to be found in the capital cities of British India. (Hear, hear.) His Excellency had reminded the meeting that they had social and moral battle fields upon which to distinguish themselves (hear, hear), and it was on that account that he had alluded to the existence of the social bridges, one of which had been cut off. H. E. the Chairman had also reminded the meeting of the services of the Kamas, Patells, and other great Parsee families who had been the backbone of the Bombay community from the year 1860 until the present day. (Hear, hear.) He had no doubt that they would follow in the steps of Nowsherwan and always be just, for which quality Nowsherwan was known until this day as the "great." Being just, they could always exercise those qualities of heart and head which the Jamsetjee family had exhibited and which had brought them into such deserving prominence. (applause.)

3rd April 1879.

(Before the B. B. R. A. Society, supporting a resolution thanking the Hon'ble Mr. Gibbs for his services to the Society.)

Rao Saheb Vishvanath Narayan Mandlik, in supporting the resolution, remarked that there were one or two things which ought to be known, and upon which he could speak with some authority, and they related to their President, who in an indirect way had

considerably helped the Society. His Excellency had alluded to the Literary Society which was established in 1804. The Transactions of this Society had for more than 25 years remained unpublished, and by enabling him to bring out these volumes, Mr. Gibbs had rendered great service to the Society. With regard to what His Excellency had said, he was convinced that very little more could be done to chronicle the progress of the country in its different stages of advancement until the people in the different presidencies had received a proper amount of education and training. It was for them to work out under European guidance, from their own stand-point the various stages of development, and to bring out works in the several departments of human knowledge. He was quite sure that much as might be done and was being done by Government in all its departments, explorations of a Society like their own could do much more, and although the departments of State might help and act as their guides, their advancement must be their own work. He was sure that they were indebted to His Excellency for coming there that day, and pointing out to them in what direction their duty lay, and in addressing them in such sympathetic terms. He trusted that both Europeans and his own countrymen would strive to labour in the field which had been pointed out, which was as boundless as the universe itself.

17*th August* 1880.

(At a public meeting in the Town Hall under the presidency of H. E. Sir James Fergusson to organise a fund for the relief of sufferers in the Afghan War).

Rao Saheb Vishvanath Narayan Mandlik said the resolution which had just been proposed by the Lord Bishop of Bombay was one which happily at that meeting required no special recommendation from him. But this was an occasion in which all classes and all races and all creeds ought to show their readiness as citizens of the great city of Bombay, and as citizens of the Great British Indian Empire, to do their duty by those who had suffered for their country. As His Excellency had pointed out in his opening address the Government had taken their rightful position as leaders of the Bombay citizens in a good work, irrespective of the

claims of such work on Government itself, and all the varied sections of the community assembled at the meeting that day would, he trusted, emphasise and confirm the action of the Government. The community of Bombay, through its representative citizens, through its citizens of all ranks and grades, were prepared to do their duty on all proper occasions cheerfully and manfully. Reference was made by the Lord Bishop to what was said in the papers in regard to this fund being a patriotic fund. He thought, even with its altered designation, if the people of this country would get out of their provincial patriotism, if he might so call it, and the citizens of the United Kingdom who were their fellow subjects in this empire, would, if he might so say without reproach, get out of their insular patriotism, and all citizens join in common cause they might, irrespective of events, stand on a common level of humanity and do what thy were asked—namely, raise a proper and fitting memorial wherewith to assist the soldiers and their families; and, as he understood, even those who were not purely soldiers, but had still suffered during the war, and had a certain claim on this great city and on British India generally. (Applause.)

28th April 1883.

(At a public meeting in the Town Hall in support of the Ilbert Bill).

The Hon'ble Rao Saheb Vishvanath Narayan Mandlik said :—Sir Jamsetjee Jejeebhoy and gentlemen,—The task of reading the memorial which is to be adopted to-day has been entrusted to me, and before I carry it out, I take the liberty of submitting a few remarks for your consideration. If it were left to me, I should have preferred to place before you the resolution which I have to propose without any prefactory speech, because after my two learned friends have exhaustively disposed of nearly all the arguments opposed to the acceptance of the Bill, little is left for me to say on that head. There are occasions when silence may be misconstrued, and I consider the present as one of those occasions. I shall, however, content myself with a few words on matters on which my learned friends have not yet spoken, and to which no reference, except a passing remark, seems to have been made in the voluminous proceedings that

have just come to hand of the debate in the Viceroy's Council. I believe, gentlemen, the present Bill is simply the historical outcome of the consistent, continued, high-minded, and generous policy of the Government of British India from the time of the Marquis of Hastings. (Cheers.) I pass over the period of more than forty years, down to the time of the passing of the so-called Black Act which removed the civil disabilities of the trying judges here. All civil claims could after that Act be tried, and are now being tried, from the Himalayas to Cape Comorin, by all judges of all nationalities, according to the powers entrusted to them by the statute law of the country. At the time of the renewal of the last Charter, or rather at the time of the discussions for the renewal of the last Charter, in 1852 53, up came the question of the extension of the powers of proper persons selected from the native community to represent the various administrative branches of the service. Persons of mature experience, like Sir George Clark and Sir Fredrick Halliday, questioned, on grounds which some of you might pronounce whimsical, the expediency of admitting natives into Legislative Councils and the superior branches of the service, and their several arguments in support of their views may be found in the Commission Books of 1853. The Lieutenant Governor of Bengal (Sir Frederick Halliday) urged that if the natives of this country were appointed to high posts, it would occasion jealousy and other evils; and he mentioned the case of a gentleman appointed to a high office by Lord Dalhousie, in support of this view. But, gentlemen, experience has shown that those fears were groundless. The fact is that within ten years of giving his evidence Sir George Clark himself, in the Durbar Room of this very Town Hall, congratulated his native colleagues in the Legislative Council on their admission into that assembly to assist the deliberations of Government. (Cheers.) Subsequent experience has shown, and will show, how far the natives have realized the expectations formed of them in the discharge of the important duties of legislators. The next step was to declare the High Courts open to the admission of qualified native gentlemen as judges of these courts or of those courts which are known throughout the land as the courts of the Queen-Empress. Here, for the last twenty years, every subject of the Queen has been amenable to the civil as well as criminal jurisdiction of qualified

native gentlemen who have the honour of seats on the benches of these high tribunals. Experience has also shown that even criminal sessions held by these judges have caused no inconvenience, no public scandal, no injustice, nothing unfair on the part of those who were either being tried, or those who tried them. When I have spoken of the very heads of the judicial administration, you will pardon me for not going into details. However, there is one point which I must here mention. As I have said, the present measure is simply the historical outcome of the educational and political policy of the Government of India. Gentlemen, the political policy was enunciated so far back as 1833, in the discussion which preceded that year with reference to the India Bill, which was passed. But in the educational policy there have been several changes and perturbations, and after the memorable year 1857 there were not wanting many, be they natives of India or foreigners, who attacked the policy of the State, on the ground that the education that was given was not the best calculated to promote the political interests of the British Empire. You will remember that the policy of the *Friend of India* at the time was, if I may say so without offence, certainly opposed to the interests of the people of that magnificent province where that paper is published, namely the masses of Bengal. And when I say the masses of Bengal, I do not exclude the masses of their countrymen in other Presidencies. But you must remember that the tone of the paper takes its colour mostly form the writer's predilections for the inhabitants of Bengal. After examining the whole of the policy, in one of the articles which you will find in the early numbers of 1859, the writer pronounces unequivocally that much as he dislikes the young educated Bengali, or for that matter the young educated native, he prefers him altogether to those who are set up against him, namely, the old fashioned and pliant people of "the good old times." (Cheers.) If, therefore, you review the several periods from 1853 to 1859, from 1859, to 1863, and from 1863 to 1883, you will find that a period of some twenty years has elapsed during which Native Covenanted Civilians have been discharging their high functions to satisfaction. For a period of nearly thirty years natives have been acting as judges of Her Majesty's High Courts. For more than twenty years native gentlemen of education and influence have been discharging their duties to the

very best of their power in the various consultative Councils, both of the Supreme Government of India and of the provincial Governments of Bombay, Bengal, and Madras. If any disaster has not resulted from any of these measures, if members of the Legislative Council like Mr. Quinton and Mr. James Gibbs—the honourable gentleman whom you have often heard in this hall (cheers)—if these gentlemen tell you that this Bill is 'an administrative necessity, all I can say is that we are in very good company in supporting a movement which has the approval of several successive Secretaries of State, both Conservative and Liberal, and several distinguished Viceroys, not the least distinguished of whom is the one who now fills to the glory of the British Empire the high office of the Queen's Deputy. (Loud cheers.) If, I say, the Bill, backed up by high legal and constitutional authorities, and by the voice of the impartal public represented by the House of Commons, and having for its object the practical, though it may be the distant, improvement of more than 250 millions of mankind, were presented to the public, and if the public were asked for its vote on the Bill, all I have to say is, that you will pause before you reject such high authorities as are in support of the measure. But seeing how you have received the speeches of my predecessors, I have no doubt that with one unanimous verdict you will say that we should adopt such a memorial as the one which I shall now read and submit to your acceptance. (Cheers.)

27th August 1883.

(At a public meeting in the Framji Cowasji Institute to adoptan address to Sir Evelyn Baring, the Hon'ble Mr. Mandlik presiding.)

The Chairman said :—Gentlemen, you have been invited here by the managing committee of the East India Association, in response to a call made upon that body that they should invite the inhabitants of this great city to testify their appreciation of the great financial and economic services rendered to this county by the Finance Minister of India, Major the Hon. Sir E. Baring (loud and prolonged applause), who leaves these shores by to-morrow's mail-steamer. I thank you sincerly for electing me to the chair to-day, and I am sorry the President of our Association is not present at

this meeting. Gentlemen, several citizens have signified their regret that they are not able to put in their appearance. * * *

I will not detain you, gentlemen, by any lengthy observations of mine. At the meeting held only a few weeks ago by the Bombay Branch of the East India Association I had the honour of moving the adoption of a draft address which you have seen published in the papers of this morning. It is not an ordinary thing to be a successful Finance Minister of such a large and varied empire like India, but it is still more uncommon to find a man in Major Baring's position—I ought to say Sir Evelyn Baring's position—who, besides working at the mere financial and revenue questions which fall to the share of a person in that situation, has tried to realise the circumstances of the British Government in India as a great Imperial Power striving to do its best for the varied peoples committed to its charge. At the meeting, when he presented his first financial budget to the Viceregal Council, he said that, although India was a country the resources of which were great and capable of development, yet that its people were extremely poor, and that fact was to be borne in mind by those who had charge of the helm of the State. Within the last three years, amidst all the difficulties caused by the Afghan war, the prevalence of famine for several years, and the entanglements created by the Egyptian expedition, Major Baring has provided not only for these, but has effected besides a number of great reforms, financial and economical, each of which is enough to make a very great impression on the future history of this country. Succeeding speakers will tell you in greater detail the value of such services, but I will ask you particularly to remember the great reform that has been made by the reduction of the salt duty—a thing which is most appreciated on this side of India, where the people are extremely poor, and to whom this twenty per cent. reduction of salt duty has been an immense and lasting benefit. (Applause.) The next reform is in relation to the Post Office and the reduction of the telegraph rates. I think this reflects very great credit on his financial administration,—(Applause)—because it is a reform which requires a stout British heart to powerfully grapple with it. You will remember, gentlemen, that the opium agitation in England had become so very powerful as to attract considerable attention even in the two Houses of Parliament. Major Baring, in his last financial

statement, has not only given great assurances to the British subjects within this vast empire on this head, but he has shown that a man in his position could rise to the height of the argument, and he has tried to convince even the British public in England—a fact which very few can gainsay. (Applause.) The reforms by Major Baring in relation to railways and private enterprize are such as, I trust, our future generations will yet reap the benefit of the harvest. I must tell you that, whatever may be considered the advantage of other measures for the improvement of this country, none will be so lasting, none will be so great, and none will be so profitable as those which contribute to the economical and industrial progress of this great country. (Cheers.)

29th November 1884.

(Moves the adoption of the address to Lord Ripon at a public meeting in the Bombay Town Hall.)

The Honourable Rao Saheb Vishvanath Narayan Mandlik, C. S. I. said:—The first thing which you will allow me to say in presenting the address is to mention to you the presence of several ideputations from the mofussil and from several of the largest mills n the city. (Cheers.) You have now among you a deputation from Khandeish and another from Sholapore saying in the names of the varied population of those large districts that they take the warmest interest in what is going on in this Town Hall, and they also propose to send their deputations to us at the time the address is presented. (Renewed cheering.) This is not an age in which the gates of Somnath can make any Viceory famous. (Laughter.) We have gone beyond the heroic period. We have arrived at an age of commerce and electric communications. But what connects Lord Ripon with this meeting and with the whole of India is that telegrapic influence which moves the human heart and the human mind, and which makes one feel as if all were animated by a single voice—the voice that has brought us here to-day. (Cheers.) The mental and moral influence which is the guiding and the ruling spirit of the present administration commands our sympathies, our respect, our gratitude and our affection. All the matters connected with this administration have been explained in the

address which is now before you, and which you are formally asked to pass. (Cheers.) When I spoke of the district deputations, I should also have asked leave to mention that I just now had placed in my hands two substantial and princely tokens which show that the princes of India are linked with the people in their admiration for this great administration. These links come to you from the heart of Kattywar—one from H. H. the Chief Limree—and you will learn with satisfaction that each represents Rs. 5,000. Therefore, you will remember that in the business we have assembled to transact we have not only the people but the princes of India with us, all joined together in one solemn thanks-giving address to our retiring Viceroy. (Cheers.)

13th August 1884.

(At a public meeting in the Framji Cowasji Institute under the auspices of the Bombay Branch of the East India Association, for memorializing to Parliament for raising the age limit for admission to the Civil Services : proposes the adoption of the memorial.)

The Hon. Rao Saheb Vishvanath Narayan Mandlik, who was received with cheers,—said that his friends, Hon. Mr. Budroodin and Mr. Pheroshaw Mehta had already told them the history of the present question, and how the agitation had arisen. Before the East India Company was abolished there was a considerable agitation on the question in England and in Bengal. But Parliament, having decreed that there was to be no distinction in regard to the patronage in the Convenanted Civil Service, the natives of this country were content to see the solemn promises then given fulfilled and in their proper time. If they referred to the history of the Civil Service under the old East India Company they would see that it was after a very great agitation that open competition for the service was permitted. It was only in 1852-53 that the doors of the competitive examination were first opened, and it was in the examination for that year that Mr. Peile, now a member of the Executive Council, and Mr. Justice West of the High Court passed. The limit of age was well discussed and fixed at 23. The reduction of age which was gradual and therefore, to a certain extent unperceived, had not been benefical in its effects. But the very con-

stitution of the service had made outside influence almost inaccessible in regard to any reform on that subject. Matters continued in that state until the Act of Parliament which had been mentioned in the memorial was passed, whereby a final step was taken by some benevolent gentlemen (laughter), and virtually shut the door of competition service on the natives of this country. When he said so he was aware that a back door had been opened under the provisions of that statute. But nobody of educated men would consent to enter the privileged service by the back door, whilst their fellow subjects, and their own countrymen, one in a thousand, on account of the immense sacrifices they had to make, could enter by the front door. Questions had been naturally asked why that front door had been gradually closed, closer and closer if he might say so, under the influence of some new policy. It could not be said that there was evidence in the despatches as were now accessible to them showing any reason for that change. But whatever was the object of it and whatever were the good intentions, the result obtained would be avoided as much by the rulers as by the ruled, Now what remained to be considered was the way to remedy the evils from which they had been undoubtedly suffering. He simply spoke upon the question historically. The Government of India organised a large comprehensive scheme of education in the time of Lord Auckland and in the time of Lord William Bentick, and the policy under the guidance of Lord Macaulay was finally settled by which the knowledge of western literature and western arts, and western philosophy was to be imparted to the children of India. That had now become a fixed policy of the British Government. That being the case he took them once more to the period when the press of India was first emancipated by the celebrated statesman, Sir Charles Metcalfe, who laid down that whate ver might be the wishes of those who desired to shut up the avenues of knowledge upon the people of this country, he would not be a party to it. (Cheers.) Sir Charles Metcalfe stated that he was sure that the noblest statesmen of Great Britain never wished for such a result, and he held that it would be a curse to the country to hinder the progress of education in India even if that progress necessitated his going out of it. (Cheers.) Since that day education had advanced. They had for the last 28 years Universities in this country generating mental and moral forces, which

as good statesmen Government were bound to direct in the proper channel. (Cheers.) That was an historical fact which could not be gainsaid. He thought that a proper share in the Government of the country which they asked not by favour but by open competition ought to be secured to those who had obtained a fair amount of education under the auspices of the Government themselves. To keep them back now was like shutting up the safety valves of the steam engine, and the result would no doubt be unfortunate. It was for the meeting to consider whether under the constitutional Government like theirs they were not then adopting the only step which they proposed to adopt to clear the difficulties in their way, and in so doing, were not following in the wake of those who had set the glorious machinery of education into motion in this country. (Loud cheers.) With these remarks the speaker moved the adoption of the memorial.

10*th Janurry* 1885.

(At a public meeting in the Calcutta Town Hall for raising a memorial to the late Hon'ble Babu Kristo Das Pal C. I. E.: seconds the Hon'ble Mr. Miller's proposition for an Eye Infirmary and a bust.)

The Hon'ble Rao Saheb Vishvanath Narayan Mandlik seconded the resolution. He said that it was due to the kindness of those who had asked him to speak at that meeting, that he took some active part in the proceedings. Ordinarily, after the eloquent address which they had from Dr. Mahendra Lal Sircar, and the speeches of the Hon'ble the Chief Justice and the Hon'ble Sir Steuart Bayley, he should have felt his duty simply to second the resolution, and to take his seat; but as a brother journalist who had known the late Kristodas Pal for more than 20 years, and watched his career for severel years before, he thought it right to second the resolution, by making a few remarks on points which had been left untouched in the speeches hitherto made. It had been rightly said by Sir Steuart Bayley, that the *Hindoo Patriot* had already attained very wide reputation under its first able—though some times called by less appreciable critics, eccentric—editor. For himself, he had

always obtained a large amount of instruction from the writings of the first, as well as of the second, editor; but what he always admired in both, was the breadth of the views, and the earnestness with which they advocated their opinions. There was no part of the dominions in India where the welfare of the people was not watched over by Kristodas Pal with the utmost solicitude—all measures of national importance in all parts of the country had his equal attention and support; and though it had been said, that the other Presidencies of India outside Bengal, were foreign to Bengal, if he might so say, in their sentiments and views, he was there to give it an emphatic contradiction. Whether it had been the system of education which had been introduced into the country under the benign auspices of the Government, or whether it had been produced by such writings as those which appeared in the *Hindoo Patriot*, and which was now seen throughout the length and breadth of the land, this much was certain, that one and all felt for the injuries, the wants, and the aspirations of each other. (Applause.) The hon'ble speaker considered that this result was due, to a very large extent, to the successful work which the late Kristodas Pal had originated, and which he had carried through over, as nearly as he remembered, a period of more than 28 years. They were indebted for the position which the country occupied in that scheme of progress and enlightenment which their Government directed, to the hearty concurrence in it of men like Kristodas Pal. And if they sometimes found a certain amount of diffidence and distrust in the minds of those who watched that progress, it only lay with themselves to remove that distrust, and correct those impressions, by steadily persevering in a course of hard work and self-abnegation, such as had been exhibited by their late and much lamented friend, the Hon'ble Kristodas Pal, throughout the whole of his valuable life. (Applause.) There was no progress worthy of the name unless it was gained by hard and unremitting labour. No doubt the progress of educational institutions on this side of India had been very great: but there was one point in the career of the deceased to which he wished to draw the attention of the meeting, particularly of the native gentlemen present, and that was the deceased's appeal for the conservation of all the ancient science and learning of the country which, under the din of fashion, was being neglected. The educated youth of the country

were apt to run away with the notion that India was a clean sheet with no traditions, and no stores of knowledge in it. Those who had studied for themselves the writings of such learned *savants* as Professor Max Muller and others, would do exactly that which Kristodas used so well to expound and preach to all his admiring and now sorrowing countrymen. Kristodas was beyond question a friend of humanity, and the speaker was glad that a proposal to associate his name with the relief of suffering humanity had commended itself as one which ought to be brought forward before the meeting. He was not certain that Dr. Mahendra Lall Sircar was not right in asking their acceptance to a larger proposal, to which he hoped they might yet see their way. But speaking as a Bombay friend of the deceased, the memorial either in its present or modified form was one which commanded their approval. (Loud applause).

2nd September 1885.

(At a public meeting in the Town Hall for raising a memorial to the late Professor Fawcett: seconds the proposition recording the sense of the people of the loss sustained by the country by his death.)

The Honourable Rao Saheb Vishvanath Narayen Mandlik said: Your Excellency, Ladies and Gentlemen—I have very great pleasure in seconding the proposition which has been so eloquently placed before you by my friend, Mr. Budroodin. Since 1866, when Mr. Fawcett's voice first made itself felt in the House of Commons, he was remarkable for those qualities of searching criticism and thorough independence which were acknowledged to be his due by the leaders of both parties in both Houses of Parliament. And above all, you will see one great quality of the great statesman which was described by Mr. MacCarthy, the leading Irish member, in the House of Commons, namely, his transparent sincerity in all matters which he discussed at all times in his place in the House of Commons. Gentlemen, India has before acknowledged, and Western India in particular has emphasized its recognition of the services of Professor Fawcett on more than one occasion. The Bombay Association voted an address to the voters of Brighton, and the citizens of Bombay raised a considerable amount towards defraying

the expenses of his election at Hackney on another occasion. It can hardly be said, therefore, that this community has not to a certain extent discharged its duty by recognising the labours of Professor Fawcett. But I think, gentlemen, now is the occasion that these labours of his should be specially recognised, not only as a deserving tribute of departed worth, but on account of the exigencies of the times, when, I am sorry to say, the labours of such men as Professor Fawcett may probably be missed on the discussion of very important questions which are arising before us, both in this country and in England. We have been for several years past agitating the question of open competition for the Civil Service of India. But if you remember what the deceased did on this subject alone, I feel sure you will agree that his services on that occasion require special recognition. It was Professor Fawcett who in 1868 and 1869 introduced a motion urging upon the attention of the House of Commons the fact that the people of India were very heavily weighted in the competition, and that examinations, therefore, ought to be opened in India. (Cheers.) But there is another subject upon which his services have been still more valuable. It is well known that Indian budgets are introduced at a very late period of every session in the House of Commons, and it was Professor Fawcett who nearly every year discussed in great detail all these budgets, and impressed upon the attention of the House of Commons the necessity of devoting greater attention to Indian affairs. It was at his instance that we obtained a commission of inquiry into the finances of India in 1873, and the remarkable accuracy and the remarkable mastery of details which he then exhibited was reported specially in the columns of the *Friend of India*. After quoting passages from the newspaper, the speaker proceeded to say that there was one more service which Professor Fawcett did, and that was in criticising our public works policy, which he condemned as being most extravagant and improperly conceived or supervised. The speaker here quoted a few lines from Professor Fawcett's last work, entitled "State Socialism," and said that in every speech which he made what he most relied upon was perfect justice to the people of India. (Cheers.) You will also (the speaker continued) in view of the difficulties which are now coming upon us be glad to know that Mr. Fawcett was opposed to the abolition of the import duties on Manchester cotton goods. He

also defended the lowering of the salt duty, regarding which there was an extraordinary unanimity of opinion in India, and regarding which the Lieutenant-Governor of Bengal said the other day that he would rather have his right hand cut off than be a party to increasing the salt duty. (Cheers.) Similarly, Mr. Fawcett opposed what was called the Gagging Act. (Cheers.) I, therefore, trust that this community will rise to the dignity of the occasion, and see that what we may do now will be deserving of the subject of the memorial as well as of this great community. (Loud cheers.)

14th October 1885.

(At a meeting of the B. B. R. A. Society to receive Count A DeGubernates of Italy and to elect him an Honorary Member of the Society.)

The Chairman, the Honourable Rao Saheb Vishvanath Narayan Mandlik, said:—Gentlemen,—The principal business for which we have met this evening is what I will, with your permission, now lay before the meeting, under article five of our rules, and that is to propose that Count A. DeGubernatis, Professor of Sanskrit in the Royal Institution at Florence, who by his researches has considerably enriched comparative physiological literature, and added materially to the knowledge of India on the Continent of Europe, should be elected an Honorary Member of this Society, and that we invite him to read his paper on "Indian Studies in Italy," which he has kindly offered to do. Gentlemen, I shall be very brief in my remarks, because another gentleman who will follow me, and who has a more complete knowledge of European languages will be able to do better justice to the subject, but I must say that since the proposal came before us in committee I have seen an English translation of one of the Count's works, which is a very exhaustive work in its way on what I may call mythological zoology. It is a very learned work, and it is one which, coming from one in the position of the Count, is certainly calculated to create a very wide and general interest in the ancient history of this country. I think, gentlemen, that we have to a considerable extent departed from the early tradition of this Society; and I speak here in regard to our own as well as the

sister Societies in Calcutta and Madras. From what I have read in the old transactions, we appear to have created great interest in the study of Sanskrit on the Continent. I do not say that that interest has now faded, but it is not kept up by us to the extent to which it ought to be ; and to a certain extent, it is, I think, to the election of such members as the gentleman whose name I am now bringing before you, that we can hope to diffuse an intimate knowledge of this country, and of its literature, and of the quaint institutions which have been preserved through thousands of years, in the West. I think it is very necessary, and from what I have seen of the earnest inquiring spirit and powers of observation contained in his work Count A. DeGubernatis is well qualified for such duties as I have named ; and he will be an acquisition to this Society. I beg to submit his name for the acceptance of this Society.

* * *

Gentlemen, with your permission I beg to propose that we offer our best thanks to the Count for the paper which he has read here this evening. This is an innovation, and a very agreeable one. I have not been present here at the reading of any Sanskrit paper, although a short one, interspersed with English extracts, was read here in 1864 or 1865. I trust that this will be the commencement of a new era in our history; and I hope that the interest which this event will excite among our members here will be reflected by the increased interest in Europe, and that it will replenish our stores and contribute to our mutual progress and that of our country.

4th February 1889.

(Requesting Lord Reay to open the new Elphinstone College Building.)

The Honourable Rao Saheb Mandlik said :—Having heard what his learned friend, the Principal of the College, has just addressed to his Excellency, he thought it would not be correct for him to detain the assembly long. There were one or two points, however, which he felt it his duty to refer to on behalf of the other large class he had the honour to represent. The Elphinstone College was a building with which he had been personally connected for the lasty forty-two years, and he was glad to say the training had been

of such a character that he had not forgotten up to this day his character as a student. (Hear, hear, and applause) Those who expressed any difference of opinion in regard to the system of teaching or the training which was undergone under the auspices of the professors of that college, past and present, ought to be more historical in their treatment of the subject, instead of being entirely theoretical. This was the fifth place in which the college had been located, and he was sorry to say that he was one of those who were not quite satisfied with what they had got. But Government had been so liberal and so discriminating in the encouragement which they had uniformly given to education under the Government of his Excellency and his predecessors, that he, the speaker, had no doubt that to any reasonable request which might be made Government would always lend a willing ear. (Applause.) They were now in one of the noblest rooms of that grand building, but he would assure his Excellency that there were certain wants which were felt by the students, but which he would not refer to in detail. There were wants which might be supplied with much benefit to the students, but he knew that at the present time Government was not in a position to be more than ordinarily liberal, though they would be discriminatingly liberal, and he trusted that when the time came they would do the needful. With reference to one point in Dr. Peterson's speech he might say that whatever distrust there might be in regard to educational institutions in India, Government might rest assured that the work of the Elphinstone College had been far-reaching, thorough and independent, as long as he could remember—(applause) —so that Government need be afraid of nothing in seeking the confidence, not only of the present generation of students, but of the past and future generations of students. With his Excellency's permission, he would, with Dr. Peterson, join in wishing him to declare that institution open and available to the professors and students of the college. (Loud applause.)

APPENDICES*

[TO THE
PAMPHLET ON THE
BOMBAY REVENUE JURISDICTION BILL.]

APEENDIX A.

Extracts from the "Gazette of India," showing the progress of the Bombay Revenue Jurisdiction Bill, 1873.

(*From the Gazette of India, 16th August* 1873.)

THE Hon'ble Mr. Ellis moved for leave to introduce a Bill to limit the jurisdiction of the Civil Courts throughout the Bombay Presidency in matters relating to the land-revenue.

He said that the proposed Bill referred to the Bombay Presidency alone, and it would be asked why, under these circumstances, it was to be dealt with in this Council? The reason was that the two points which were embraced in the Bill could, neither of them, be dealt with by local legislation. One of the points involved the repeal of a portion of an Act passed in this Council, and the other affected the jurisdiction of the Bombay High Court, and, therefore, could not form matter for consideration in the local Council. The first and minor point embraced in the Bill was this. When the Land Improvement Act of 1871 was being passed, it was thought proper to repeal certain former enactments having reference to the subject of *takavi* advances, which were to be provided for in that Bill. Section 13 of Regulation XVII. of 1827 of the Bombay Code provided the means of recovering such *takavi* advances, and to that extent was properly included in the schedule of the Regulations repealed by the new Bill. But it was unfortunately overlooked that

* These papers have been reprinted to enable readers to better understand the subjects discussed in the two pamphlet in which there are references to them in several places.

the same section also provided for the recovery of arrears of ordinary revenue, and whilst provision was being made for the repeal of the portion relating to *takavi*, the whole section was repealed, thus taking away the legal means of the Bombay Government for recovering arrears of ordinary revenue. This was the inadvertence now to be remedied.

The second point to be embraced in the Bill was of greater importance, for the effect would be to restrict the jurisdiction of the Civil Courts of the Bombay Presidency in matters relating to the land-revenue. The necessity for the restriction arose in this way. Recently, several suits had been brought into the Civil Courts impugning the validity of assessments made by the Survey and Settlement Officers and confirmed by the Government. These suits had gone so far as to bring in question the amount of assessment, and the mode of making the assessment. Mr. Ellis would give a notable instance which had occurred quite recently. A landholder objected to an assessment of Rs. 4, placed upon his field by the Settlement Officers. This case was, on appeal, finally decided by the High Court in favour of the survey plaintiff, and it was ruled that the assessment of the officers of the survey could not be maintained, because it contravened a local rule of the survey that not more than one-sixth of the gross proceeds should be imposed as the assessment on any field.

Mr. Ellis did not mention this case with the view to criticise the decision of the learned Judges. It was not his province to do so, but he mentioned it in order to show what the effect of the decision was, if that decision were to be acquiesced in. The result was that the ordinary principles which regulated the Bombay system of survey and assessment were entirely upset; for there was, under that system, no local or other rule which required one-sixth of the gross profits to be the limit in assessment. The result, then, of the decision of the High Court—if we acquiesced in it—was that the principles of our settlement throughout the country would have to be modified, contrary to the opinion of those who were best able to judge. Such was the effect in this particular suit. In other cases, equally injurious effects might follow if the present practice were continued. For example, certain modes of assessment, and certain prin-

ciples of assessment, might have been adopted by the State. Those modes and principles might not commend themselves to the learned Judges; and in cases practically involving broad political questions, and matters of State policy, the opinions of the Judges of the High Court might over-rule the deliberate decision of the Government here or in England. There were other minor evil consequences which followed on the present system. He need hardly say that if, under the Ryotwarri system in Bombay, every man was allowed to question in a Court of Law the incidence of the assessment on his own fields, the number of cases which might arise was likely to be overwhelming. The suit to which Mr. Ellis referred—one of Rs. 4 only—was an instance of the small amounts which might be brought into Court; and if cases of this kind were frequent, and the Survey Officers had to give evidence in each of them, the result would be that their time would be so fully occupied with such matters that they would be unable to attend to their duties, and the whole machinery of the Survey and Settlement Department would be disorganized. Moreover, it might be questioned whether Judges learned in the law, however skilled they might be to decide the cases ordinarily brought before them, were best fitted to deal with matters requiring special and technical knowledge, and which had been settled and decided by officers who had been all their service trained in this special branch of knowledge. Again, supposing the Judges to possess that knowledge, it was beyond question that the practice of referring disputes to other tribunals had the effect of impairing that good-feeling which usually existed, and which ought always to exist between the Revenue Officers and the people of the country with whom those officers had to deal.

For all these reasons, therefore, Mr. Ellis thought it undesirable that the present system should remain in force; and the Bombay Government, being of the same opinion, had applied to the Government of India for legislation on the subject.

Now, the Bombay Regulations to which exception was taken, and which it was proposed to alter, went much further in admitting the jurisdiction of the Civil Courts than did the law, so far as Mr. Ellis was acquainted with it, in any other province of India; and moreover, in a considerable portion of the Bombay Presidency itself,

the law as it now stood denied to Civil Courts the cognizance of revenue cases, which in other parts of the same Presidency had hitherto been cognizable by the Civil Courts. The extent to which jurisdiction should be barred was a matter for discussion. It was now being discussed between the Government of India and the Bombay Government, and, when finally settled, Mr. Ellis would explain what the details of the Bill would be. This could be better done at a further stage of the measure, if the motion he had now to make was accepted, and leave was given to introduce the Bill. On this occasion it was only necessary to mention that the proposed Bill would be so drawn as not to affect suits instituted previous to the present date.

The motion was put and agreed to.

(*Gazette of India, 6th September* 1873.)

The Hon'ble Mr. Ellis begged leave to postpone the introduction of the Bill to limit the jurisdiction of the Civil Courts throughout the Bombay Presidency in matters relating to the land-revenue. He said that when he asked leave to introduce the Bill, he explained that it would not be introduced until the details had been settled in full discussion with the Bombay Government. A reference had been made to Bombay, but sufficient time had not elapsed to allow of an answer being returned.

Leave was granted.

(*Gazette of India, 18th October 1873.*)

The Hon'ble Mr. Ellis introduced the Bill to limit the jurisdiction of the Civil Courts throughout the Bombay Presidency in matters relating to the land revenue, and moved that it be referred to a Select Committee with instructions to report in three months. He said that on a former occasion he had explained to the Council the object of the Bill, and he had then mentioned the reasons which had led the Bombay Government to request the Government of India to introduce the Bill into this Council. He would now briefly explain its provisions. Since the date when leave to introduced the Bill was given, there had been a correspondence with the Government

of Bombay as to the way in which the object of the Bill could be best effected. The Bombay Government had made certain suggestions, some of which had not been adopted, because they seemed to deal with matters which were hardly within the scope of the present measure. Others were perfectly in accord with the principle of the Bill, but were matters of detail, and might therefore very properly be considered when the Bill came before the Select Committee. In its general tenor the Bill appeared to meet the views of the Government of Bombay.

The principle of the Bill was briefly to exclude the Civil Courts from the jurisdiction which they now possessed in certain parts of the Bombay Presidency in respect to matters affecting the land-revenue. To this proposed exclusion, however, certain exceptions were made in the Bill. Revenue proceedings in the Presidency Collectorate were excluded, they being under a wholly different and separate law of their own. All matters relating to towns and cities, the revenue law of which was regulated chiefly by Bombay Act IV. of 1868, it was also proposed to leave untouched in this Bill, there having been recent legislation on the subject. Also it was proposed to exclude from the operation of this Bill all holdings of land partially or wholly exempt from the payment of land-revenue under Acts II. and VII. of 1863.

The reason for this was that it was not designed to interfere with the privileges of holders of revenue-free, or partially revenue-free, lands in this Presidency as secured to them under Acts of the Legislature so recent as 1863. Similarly, no interference was made in this Act with holdings under Act XI. of 1852; such holdings would remain on the same footing as they now were—and, in fact, all Acts in force relating to holdings to alienated land, whether under the Acts of 1863 or under the Act of 1852, were unaffected by the provision of the present Bill. In the first instance some slight amendments in Act VII. of 1863 had been proposed in order to make the law on the subject wholly consistent, but, at the suggestion of the Bombay Government, those proposed amendments had been omitted, so that those Acts would remain intact, and would not be interfered with by the passing of this Bill.

In the Presidency of Bombay generally, as Mr. Ellis had explained before, different laws prevailed in regard to jurisdiction in revenue matters. What was proposed was that these laws should, in future, be uniform throughout the Presidency. There was nothing in the present circumstances of the several districts to justify any difference of jurisdiction, and, as it was not expedient that the general policy of Government in relation to the land-revenue should be discussed in, or that the details of revenue assessment should be questioned by Civil Courts, it had been thought right to adopt that system which now prevailed in the Deccan, Khandesh, and the Southern Mahratta Country, in preference to that which was the law in the rest of the Presidency; and the Bill which Mr. Ellis now introduced accordingly excluded the Civil Courts from jurisdiction in the matters set forth in Section 3, namely:—

(1.)—Claims against the Government to inams, or to hold land wholly or partially free from payment of land-revenue, excepting always those expressly excluded under the previous section of the Bill which he had just mentioned;

(2.)—Objections to the amount or incidence of any assessment of land-revenue, or to the mode of assessment, or to the principle on which such assessment had been fixed;

(3.)—All disputes regarding public rent or revenue payable to Government, or complaints of exaction of district or village officers, stipendiary or hereditary.

The proposed course was also in conformity with the most recent legislation in respect to other provinces, as might be seen by reference to the Punjab Revenue Act (XXXIII. of 1871), Section 65.*

Mr. Ellis had only to add that the second object to be provided for—namely, the rectification of an error in the passing of the Land Improvement Act of 1871—was secured by the fourth section of the proposed Bill, in that the form had been adopted of substituting for words which now stood part of the Land Improvement Act, other words which would bring matters back to the footing upon which they stood before the passing of the Act. This form

had been adopted instead of reviving the old section, in order that no interference might be had with the power of the Legislature of Bombay to deal with the subject, in the event of their deeming it right, at any future period, to alter the law; whereas if this Council re-enacted the old section, it would not be competent to the Local Legislature to deal with the Law on any future occasion.

The motion was put and agreed to.

The Hon'ble Mr. Ellis also moved that the Bill be published in the *Bombay Government Gazette* in English, and in such other languages as the Local Government might deem fit.

The motion was put and agreed to.

(*Gazette of India, 11th October* 1873.)

[First publication.]

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 10th October 1873, and was referred to a Select Committee with instructions to make their report thereon in three months :—

No. 21 of 1873.

A Bill to limit the Jurisdiction of the Civil Courts throughout the Bombay Presidency in matters relating to the Land Revenue.

Whereas in the Deccan, Khandesh, the Southern Mahratta Country, and certain other territories comprised in the Presidency of Bombay, the jurisdiction of the Civil Courts is limited in matters connected with the assessment and collection of the Land-Revenue:

And whereas it is expedient that the jurisdiction of the Civil Courts should be limited in like manner throughout the said Presidency:

And whereas it is also expedient to revive certain provisions of the thirteenth section of Regulation XVII. of 1827 of the Bombay Code, relative to the recovery of arrears of revenue, which were repealed by the Land Improvement Act, 1871 ;

It is hereby enacted as follows :—

1. This Act may be called "The Bombay Revenue Jurisdiction Act, 1873:"

It shall come into force on the passing thereof;

And it shall extend to all the territories under the Government of the Governor of Bombay in Council, but not so as to affect—

(*a*) any suit regarding the assessment or collection of revenue on land situate in any place which is a town or city within the meaning of Bombay Act No. IV. of 1868, or situate in the Presidency Collectorate;

(*b*) any suit by a person claiming to hold land wholly or partially exempt from payment of land-revenue, under a guarantee or Sanad given by the Governor of Bombay in Council under Bombay Act No II. of 1863, Section 1, clause first, or Bombay Act No. VII. of 1863, Section 2, clause first; or

(*c*) any suit instituted on or before the 7th day of August 1873.

2. The enactments mentioned in the schedule hereto annexed are repealed to the extent specified in the third column thereof.

(3.) Notwithstanding anything contained in Bombay Regulation XVI. of 1827, Section 6, clause first, or in Section 25 of the Bombay Survey and Settlement Act, or in any other law now in force, suits involving any of the following matters shall not be cognizable by the Civil Courts :—

(*a*) Claims against the Government to inams, or to hold land wholly or partially free from payment of land-revenue;

(*b*) Objections to the amount or incidence of any assessment of land-revenue, or to the mode of assessment, or to the principle on which such assessment has been fixed;

(*c*) Disputes regarding public rent or revenue payable to Government, or complaints of exaction of district or village officers, stipendiary or hereditary.

4. At the end of the schedule annexed to "The Land Improvement Act, 1871," instead of the words "section thirteen," there shall be read the words "The following words in section thirteen (that is to say) 'and demands on account of money advanced as *takavi*,' and 'or of advances for former years.'"

SCHEDULE.

(*See Section* 2.)

BOMBAY REGULATIONS.

Number and Year.	Title or abbreviated Title.	Extent of Repeal.
XVII. of 1827.....	A Regulation for the territories subordinate to Bombay, prescribing Rules for the assessment and realization of the land-revenue, &c.	In Section IX., clause *second*, the word "either" and the words "or my file an action against the Collector in the Civil Court under the ordinary rules, or he may pursue both methods at the same time." In the same section, clause *third*, the words "but the reference to Government shall have no effect upon any suit instituted in the Civil Court." Section XVI., clause *fifth*.
XXIX. of 1827.....	A Regulation for bringing under the operation of the Regulations the Bombay Territories in the Deccan and Khandesh.	Section VI., *so much* as is not repealed.

STATEMENT OF OBJECTS AND REASONS.

At present the law determining the limits of the jurisdiction of the Civil Courts, in matters relating to the land-revenue, is not uniform throughout the Bombay Presidency.

In what (looking to the order in which they became known to the Legislature) may be termed the older districts, suits regarding the Government land-revenue may be brought in the Civil Courts, even to impugn a particular assessment on lands admitted to be open to assessment.

In the newer districts, on the contrary, all such matters are expressly excluded from the cognizance of the Civil Courts.

The Government of Bombay have recently brought to the notice of the Government of India a case in which an assessment made by the Survey Officers, under the twenty-fifth section of the Bombay Act I. of 1865, was reduced by a Civil Court; and have strongly urged the inexpediency of continuing to the Civil Courts in one portion of our territories a jurisdiction which they are precluded from exercising not only in other parts of the Bombay Presidency, but elsewhere in India as well.

It has been considered that the best and simplest course is to place matters on substantially the same footing in the older districts as they at present stand on in the newer districts, and to effect this is the main object of the present Bill.

The Bombay Act VII. of 1863 (for the summary settlement of claims to exemption from revenue), which is the law for the older districts, and Act II. of 1863, the law for the newer districts, are both maintained intact.

The present opportunity has been taken to revive (in Clause 4) certain provisions of Regulation XVII. of 1827 (Bombay), which were inadvertently repealed by the Land Improvement Act, 1871.

SIMLA,
16th September 1873.

B. H. ELLIS.
WHITLEY STOKES,
Secy. to the Govt. of India.

APPENDIX B.

(Translation of copy of a Sunud in Marathi.)

Extract, being sunnuds appertaining to the *khoti* village of Khajoo Turf Hatkhambe entered under the heading of Dufate* Patra in the Roz Kird (daily proceedings) of His Excellency Rajeshri Pant Pradhan, held before Rajeshri Balaji Janardhan Fadnis at Poona from the lunar date the 1st of the month of Jelhej to the 2nd of that month ending the year, in the year Arba Sitain Maya wa Alaf.

(SEAL.)

Sakho Luxuman and Ramchundra Sadashiv, Surname Vedne, Surpotdar† of Turf Khilna, and *khot* of Mouza Khajoo Turf Hatkhambe of the Soobha‡ Prant§ Rajapoor, having come over to the Hoojoor seat at Kusba || Poona, represented that their ancestors continued from days of yore (and) from the first to enjoy the *khoti wattan* of Mouza Khajoo; that their great-great-grandfather, Poorooshotum Narayan, lately expended money in securing "Pat water," or water-course, near their *khoti* house; that by constructing [*bunds to*] brooks (he) created new rice-fields, planted trees, and built a house (on a) raised sqare of stone-work, and held enjoyment of the *wattan*; that it was lately, in consequence of a disturbed state of affairs occasioned by lawless domination, he left (the village) and wandered in distressed circumstances, and the village

* A general memo-book containing notes of occurrences and a register of letters.

† An officer under the native Governments, whose business it was to assay money paid into the treasury.

‡ Province.

§ A sub-division of a country or district.

|| The chief town of a mahal or purgana.

became desolate. That after some days had elapsed, their *chootat* great-grand-father,* Govind Poorooshotum, peopled the village and cultivated (the lands thereof); that he kept one Keso Roodra Bhatawadekar in his house at the said village as his *mootalik*† for managing the *khoti*; that he (the said Keso) and one Krishna Prabhoo Bendre Devgharkar held the management of the *khoti* of the village as *mootaliks* for some days; that in consequence of the absence of their ancestors from the village, the *badhe kari*‡ *khots* lately held the *khoti* for some days as *badha*§ That thereafter their great-grandfather, Shamji Rungnath, held the *khothi* for some days during the administration at Ratnagiri of Dhondo Bhaskar by cultivating (the lands of) the village, and by peopling the same; after which he left it for Vishalgad; that, from that time forward, for fifty (or) sixty years, the *badhekaris* held the *khotship* (and) their enjoyment ceased that it was now in the year Sun Siten that the ryots of the village came to them and said—"You should take up (the management of) your *khothi wattan*;" that thereupon their uncle and one Keso Mahadew came over to the village, and they sent for and brought thither the Surdesh Koolkarni of Turf Khilna, Bhikaji Trimbak and the Peshah (or karkoon) of the mahal. In the presence of these individuals, the villagers pointed out to them their stone-built house, fields, trees, &c., and said to them—"You take up the fields; they are your *wattani*;" that thereupon they encouraged the ryots and cultivated (the lands)—but as this information was not given to the Sirkar, the Subhedar of Talooka Ratnagiri, Rajeshri Moroji Shinde, placed the *khoti wattan* in Government (books under the heading of) "Amanat,"‖ and ordered them to bring a sunud in respect thereof from the Hoojoor¶ (authority); that thereupon their kinsman, Gangadhar Trimbuk, brought the above particulars in respect of the

---

* *i. e.*, the great-grandfather's brother.

† A deputy who had power to use the seal of his principal.

‡ A person residing in one village and cultivating land belonging to another.

§ Lands without a master.

‖ Any item (of receipt or of disbursement) not brought to regular account.

¶ The royal court or presence.

khoti to the notice of the Saheb at Poona—the *Swami** accordingly granted a sunud over the soobha for the purpose of considering the issues (and) the evidence by holding investigation into the matter, and deputed Gangadhar Keshaw, Desai of Turf Kalve Majgam, who was the Sirkar's karkoon, to the soobha for the purpose; that, in obedience to the orders, Moroji Shinde, through the medium of the Sirkar's karkoon, Gangadhar Keshaw, took down the evidence of the *mahalkari*† and the village people at the soobha in the temple of Shri Ganpati. Thereupon, taking into consideration (from what had passed) the fact of there being in there possession a letter of protection dated Rowdra Sunvutsure Shake, the year in which the inauguration to the throne (ceremoney) took place, from the late (deceased) Shrimunt Maharaja Shambhoo Chhutrapati *swami*, the Punchayat‡ (assembled) held it proved that the *khoti wattan* from days of yore belonged to them. Accordingly Rs. 400 was obtained from them at the soobha as *nujur* (present), and their *khoti wattan was restored* to them, and the restoration was accompanied by letters. A letter of request was also given to the *swami* (lord or master). They therefore prayed for orders being issued to furnish them, on a consideration of the same, with a *wattan patra* of enjoyment of the *wattan*, and they produced the record of decision by the soobha, as also the *bukkar*, or account, that had been sent to the Sirkar from the soobha along with the said Rajpatra. On referring to the said papers, and on sending for the evidence of the witnesses examined at the soobha in the temple of Shri in the presence of Gangadhur Keshaw Desai, and referring the same for consideration to the Punchayat, the Punchayat held it proved that *the khoti wattan of the village was their own*, and what (the authority at) the soobha had found was held to have been rightly done. This letter is therefore hereby given to them to support their enjoyment. *They therefore should continue to enjoy the khoti of the village which has been their khoti wattan from days of yore*, themselves, their sons (and) grand-sons, and so on, from generation to generation, and they should live happily. The *nujur* in respect of the *wattan* due by

* Lord or master.

† A revenue or police officer in charge of a mahal.

‡ An assembly of arbitrators.

them under the two administrations of *kool** Bab according to (their) circumstances to the Sirkar had been agreed upon to be Rs. 501 (in letters five hundred and one). Out of this, 400 (four hundred) has been credited at the soobha of Rutnagiri last year, and the remainder, Rs. 101 (one hundred and one) has been paid into the Hoojoor Treasury, as is borne out by letters from Chitnis.

(Issued)

1 In their name.
1 To Moroji Shinday of Talooka Rutnagiri.
1 To Deshmookh Deshpande of Turf aforesaid.

3 Sbreer. Entered.

Three letters in all have been issued on the lunar date the 2nd of Jelhej which have emanated from duly accredited agents.

Translated by me,
GUNESH KESHAV WAIDYA,
Translator.

(*Translation of an Extract in Marathi.*)

Extract, being a sunud on account of the *khoti* of the village of Mouza Oosar Turf Ghosalai, entered under (the heading of) Dufate† Patra subordinate to Botkhat‡ of the Roz Kird (daily proceedings) of His Excellency Rajeshri . . . . Pant Pradhan, held, before Rajeshri Balaji Janardhan Fadnis§ at Poona, Soorsun Khammas Sitain Maya wa Alaf (1165),‖ the lunar date the . . . ¶ Moharam (July).

---

* Lands held as perpetual estate under acknowledgment and payment to Government.

† A general memo. book containing notes of occurrences and a register of letters, &c.

‡ A string of several accounts.

§ The keeper of registers.

‖ A. D. 1764-65.

¶ Blank in the original.

(SEAL).

To Govindrao Mankar and Chimaji Mankar. (This) sunud (is) as follows :—Terms having been settled according to the practice (or usage) of the country in respect of *khoti* for the giving of the village of Mouza Oosar Turf Ghosalai Prant Rajpoori to Rajeshri Venaik Dhondo, the same has been given, and this sunud is sent over to you. If the aforesaid village, therefore, does not appertain to the *wattan* of any person, you will give over (the same) to the above-named individual on *khoti* from the current year according to the practice (or usage) of the country, and have the collections in respect of the village realized through him. For this purpose (this) sunud (was granted) to the above-named individual on the lunar date the 4th of Moharam (4th July 1764.)

Shri

Rasangi* yadi.

Hoor (entered).

Translated by me,

BAL BHASKAR SHINTRE,

Translator.

15th March 1869.

(Translation of a Sunud in Marathi.)

Extract, being a letter relating to the *khoti* village of Mouza Kuradvare Turf Sangmeshwar, entered in the Dufate† Patra of the Roz Kird (*i. e.*, the daily proceedings) of His Excellency the Rajeshri Pant Pradhan, dated the 3rd Ramjan of the year Sit Sitain Maya wa Alaf (A.D. 1765-66.)

(SEAL.)

Kazi Shabudin and Kazi Abdoola, sons of Kazi Ali, the *khots* of the village of Mouza Kuradvare, Turf Sangmeshwar, having appeared before the Hoojoor, represented as follows :—The *khoti* of the aforesaid village was of old ours. During the administration of Angria

---

* Memo. issued by a duly accredited agent.

† A general memorandum book containing notes of occurrences and a register of letters, &c.

the business and duties of the *khoti* were conducted by a Gumasta, or deputy. At the close of the administration of Dulaji Angria, Rudraji Dhulap having come to Jyaghur summoned the zamindars of the country, and, having demanded from them the revenue for the next year, detained them. Our Gumasta also was detained on that account. On the other side, Khandoji Mankar came to Devarukha and having issued orders for the revenue due to his State, summoned the villagers before him, when the Gurav of the aforesaid village, who was a clever man, went there. He having won the favor of the Mankar, assumed the duties of the *khoti*. Since that time, for the last eight or nine years, the Guravs have been conducting the duties attached to the *khoti*. Formerly His Excellency the Srimanta Bhau Saheb requested Rama Shastri to look into the particulars of this case. On his (Rama Shastri's) doing so, the *khoti* was proved to be ours. But before we could enter into possession after the issuing of the usual letters and documents, your Excellency proceeded on a tour to Hindoostan. Therefore, and as we were too poor to afford to incur the expenses of repeatedly coming to the Durbar, the matter rested so up to this day. We now pray that, on a perusal of the orders of Idalsha Padsha, and other documents which are in our possession, and on a consideration of the evidence of the Jamidars as to the fact of the *khoti* having been held by us from an old period, the *khoti wattan* may be delivered into our possession." On a consideration, therefore, of the circumstances relating to the *khoti* of the said village with the aid of the opinion of the Punchayat, and on looking into the evidence afforded by the papers of the Jamidars as to uninterrupted enjoyment, it having been found that the *wattan* is an ancient *wattan* of the Kazi, this letter is issued to you. After issuing therefore, an injunction to the abovenamed Gurav, you are to put the aforesaid Kazi in possession of the *khoti* of the village in question, *and to continue in the Kazi's possession all the lands and water-courses, whatever there be of old attached to the khoti.* To this effect is issued a Chitnivisi letter to Moroje Side Jamjad, Talooka Rutnagiri. To the same effect an order to Visaji Keshew, Prant Wasai.

(A true translation.)
SHAMRAO VITHAL,
Translator.

(*Translation from Marathi.*)

Extract, being a letter relating to the *khoti* of the village of Kurbude, Turf Kelyen Mazgam, entered in the Dufate* Patra of the Roz Kird, or daily proceedings, of His Excellency the Rajeshri Pant Pradhan, dated the 22nd Sabon of the year Saman Sitain Maya wa Alaf (A.D. 1767-68).

(SEAL,)

Balaji Jivaji, surnamed Sahasrabudhe, of the Gotra (family) of Shandilya and Sutra (faith) of Ashwalayan, the Desai of Turf Kalpe Mazagam, Subha of the said Prant, having appeared before the Hoojoor, represented as follows:—"The *khoti wattan* of the village of Mouza Karbude, Turf Kalpe Mazgam, Subha Prant Rajapoor, formerly belonged to Rudraji Mahadeo Devrukhe. In consequence of his family having become extinct, the *khoti wattan* has been under the Diwan since many days. The Revenue thereof is collected at Ratnagiri, from the cultivations out of the *thal*,† which circumstance is known to Dadoba Naik Sar-Desai of the Prant of Rajapoor. If the *khoti wattan* of the village in question be granted to me on terms settled, I will go on paying to the Government the assessment that may be fixed after inspection, and after settlement of the revenue according to usage. I, therefore, pray that your Excellency may be pleased to grant the *khoti wattan* on terms from Government, and issue letters for enjoyment." On a consideration of this, and from the account given to the Hoojoor by Dadoba Naik, it appears that owing to the failure of the line of the *khot* of the village in question, the *khoti wattan* has remained in the hands of the Government, and that the revenue has been collected from you out of the *thal*.

Therefore, and considering that if the *khoti wattan* be granted to him he would bring the same into cultivation and improve it, I have the pleasure to confer upon him on *wattani* terms the *khoti wattan* which was in the hands of the Sirkar. Therefore he, his sons grand-sons, and successive generations are to enjoy the *wattan*, the

* A general memorandum book containing notes of occurrences and a register of letters, &c.

† The portion of the produce due from the cultivator or ryot to the *khot*.

manpan,* *thikans*†, *fields*, *&c*, as usual, and to go on *paying the revenue to the Sarkar according to the usage of the country, and hold possession of the wattan.* Thus (it is recorded).

SEAL.)

2 Farnivisi sunuds.

1 In the name (of the grantee).

1 To the ryots of the village in question, to the effect they should appear before the grantee, and conduct themselves under his directions in the manner of ryotship.

3 Chitnivisi.

1 To the present and future authorities and writers of the country in the Talooka of Rutnagiri and Prant of Rajapoor.

1 To the Deshmookh and Deshpande Turf Kalpe Mazgam in the Subha of Rajapoor.

1 To Karishnaji Hari, Talooka Rutnagiri. Letters have been issued and granted for enjoyment. In accordance therewith, you are to make over (to the grantee) the *manpan, thikans, and fields, &c., appertaining to the khoti of the village* in question as usual, and receive the revenue of the village from Balaji Jivaji from the current year.

3

5

(SHRI.)

In all, five sunuds and letters having been delivered, the sum of Rs. 2,000, on account of the *nazarana* due to Government as agreed upon, has been paid into the Government Treasury.

(A true translation.)

SHAMRAO VITHAL,

Translator.

* Rights and privileges.

† Lands.

(*Translation of Copy of an Extract in Marathi.*)

Extract, being a letter about the giving of the village of Mouza Palchoori Turf Foongoos Prant Rajapoor Talooka Rutnagiri on *khoti* entered under (the heading of) Dufate* Patra of the Roz Kird (daily proceedings) of His Excellency Rajeshri . . . . Pant Pradhan Soorsan Saman Sitain Maya wa Alaf, the lunar date the 14th of the month of Moharam (1168†—12th June 1767)

To Mahadaji Bahirao surnamed Pethe Wasishta Gotra (or lineage), Hiranya Keshi Sutra (line), Taeetiriya Shakha (branch). In the Shak 1690, the name of the year being Sarvadhari, this *wattani patra* is given as follows:—Your son Ragho Mahadeo, having come over to the Hoojoor at the kusba of Poona, represented that the Gayali (or deserted) *khoti wattan* of Mouza Palchoori Turf Foongoos Prant Rajapoor was long held by Government; that the collections in respect thereof were made from the ryots (in the shape of) *thal* (*i. e.*, rents); and that, on making enquiries, should the *swami* (*i. e.*, we) be pleased after settling terms to grant to him the *khoti wattan* of the village aforesaid which was held by Government, he would go on collecting and paying to Government the Diwan Dust (or assessment due to them) according to the practice (or usage) of the country. Thereupon, taking into consideration the fact that the *khoti wattan* of the aforesaid village, which has been deserted, has long been held by Government, and that the Government assessment of the village has been realized in the (shape of) *thal* (*i. e.*, rents), we find that during the administrations of Ramchundra Nilkant Amatya and Sakhoji and Sambhaji and Toolaji Angrya Sarkhails,‡ and lately from the time of the administration having passed into the hands of the Government in the year Sit Khamsen (1156)§ to this day the *khoti watttan* has been with Government, and, on looking into the record and proceedings connected with the management of villages, (we find that) there are no *mirasdar khots* for deserted *wattans*.

---

* A general memo. book containing notes of occurrences and a register of letters, &c.

† A. D. 1767-68.

‡ Title of certain Maratha princes under the Peshwa.

§ A. D. 1750-51.

Being aware that you have a large family, and that it is necessary to provide for you, we are pleased now to settle terms, and grant to you, (your) sons, grandsons, and so on, from generation to generation the deserted *khoti wattan* of the aforesaid village which was with Government. Do you therefore take the *khoti wattan* of the village aforesaid into your charge and enjoy yourself, your sons, grandsons, and so on, from generation to generation, the *hakdam* (rights and claims), *manpan* (titles and privileges), and other Kanoon Kayedas (rules and regulations) connected therewith according to the custom of the surrounding villages, as also *thikans* and fields and water of the water-courses, and to collect the Government assessment of the village according to the usage of the country and live happily. For this purpose the sunuds and letters (are as follows) :—

Sunuds.

1 In the name.
1 To the ryots of the aforesaid village.

—

2 Letters from the Chitnis (or correspondence).
1 (To) the present and future authorities of the country and writers of Prant Rajapoor.
1 The Jamidar of Turf Foongoos.
1 Krishnaji Hari Kamavisdar of Talooka Ratnagiri Rasa* Ra Yadi.

—

3

Hoor (entered).

On account of the aforesaid *wattan*, currency Rs. 2,001, namely, rupees two thousand and one, were agreed (to be received) from the abovenamed individual. The same were received (or credited) in the Hoojoor Treasury in the year Tisa Sitain (11†] 69).

Translated by me,
HARISCHANDRA SHAMRAO,
Translator.

15*th March* 1869,

---

* A memo. issued by a duly accredited agent.
† A. D. 1768-69.

(*Translation of Copy of an Extract in Marathi.*)

(SEAL.)

Extract, being letters about the giving of the village of Mouza Waladay Turf Chiploon Talooka Anganwell Soobha Prant Dabhol entered under (the heading of) Dufate* Patra in the Roz Kird (daily proceedings) held before His Excellency Rajeshri . . . . . Pant Pradhan on the lunar date the 28 of the month of Sahaban in the Soorsan Sabayeen Maya wa Alaf (1170—27th December 1769).

Santaji bin Yesji Atbar, Khot Wattandar of the village of Waladay Turf Chiploon Talooka Anjanwell Soobha Prant Dabhol, having come over to the Hoojoor,, represented that the *Khoti* of the aforesaid village was his ancient *wattan* ; that formerly there was a disturbance in that Prant, in consequence of which he went to, and resided in, the Bassein Prant; that subsequently two (or) four persons were carrying on as *badhewayika*† the *khoti* (management); that afterwards, on the administration of the aforesaid Prant passing into the hands of Government, Dhondji Thanga Chiploonkar, brother of Babooji Sinday Jamidar Sirkar, carried on as *badhewayik* the *Khoti* (management) up to the year Saman Setain ([11]‡ 68), and he requested that the *Khoti* of the aforesaid village, being his ancient *wattan*, should now be made over and continued to him. (He further represented that,) when the sunud from the Sirkar was sent over to the Sir-Soobha in the year Saba Sitain (11§67) a letter was sent by the Sir-Soobha to the address of Rajeshri Krishnaji Wishwanath, Soobhedar of Talooka Anjanwell of the Soobha Prant aforesaid ; that he (Soobhedar) therefore raised objections on the ground, that he (the applicant) was for a long time absent from the village, and required that all doubts as to his having been a rightful *wattandar Khote* should be removed; that he (the applicant)

---

* A general memo. book containing notes of occurrences and a register of letters, &c.

† Persons acting as *wattandars* in villages in which they have no *Wattans* of their own.

‡ A. D. 1767-68.

§ A. D. 1766-67.

then represented that the Jamidars and the *wattandars* of the surrounding villages, as well as the ryots of the aforesaid village might be sent for and examined as witnesses on his behalf ; that if they deposed in his favor, his *Khoti* should be made over to him; that thereupon the Jamidars and *wattandars* of the surrounding villages and the ryots of the village having been called together at the Soobha, and examined on his (the applicant's) behalf, it was proved that the *Khoti wattan* was his; that, his circumstances having been taken into consideration, a *nazar* (or present) of Rs. 150 (namely) one hundred and fifty for the Sirkar was agreed to be taken from him; and that on a resolution having been passed in the Soobha, and on the *nazar* (or present) having been received into the Sarkar, the *Khoti* was made over to him; that the khoti accordingly continued with him, but that for the enjoyments (thereof) he should have letters from the Hoojoors, and he therefore requested that, after looking into the Sahebi Soobha's letter, which was with him, we would be pleased to grant Government letters for enjoyment, and he brought and shewed a resolution by Krishnaji Wishwanath, Soobhedar of the aforesaid Talooka. Thereupon, taking into consideration the facts that the *Khoti* of the aforesaid village has been proved by the evidence of Jamidars, the people of the surrounding villages, and the villagers to have belonged from ancient times to Santaji bin Yesji Atbar as *wattan*, and that on the receipt of Rs. 150 (in letters) one hundred and fifty as a *nazar* (or present) from the aforesaid *Khot by the* Sirkar in the Soobha, the Soobha resolution was passed, and that the *Khoti* was made over to him; and he having applied for Government letters for the enjoyment (thereof), these letters are sent over to you; therefore the *Khoti* of the aforesaid village, with the right of *manpan* appertaining thereto as has from before been held, thould be continued to him, his sons, grand-sons, and so on from generation to generation, and the collections of Government revenue should be realized through him according to the practice (or usage) of the country. For this purpose the letters from the Chitnis (or correspondence department) sent (are as follows) :—

1 In the name of Santaji bin Yesji Atbar, *Khot* of the aforesaid village.

1 To the present and future authorities of the country and writers of Talooka Anjanwell, Soobha Dabhol.

1 (To) the Deshmookhs and Deshpandes of Turf Chiploon of the Talooka aforesaid.

3

SHRIR.

Hoor (entered)

(SEAL.)

Translated by me,

HARISCHANDAR SHAMRAO,

Translator.

15th March 1869.

(*Translation of Copy of a Sunud in Marâthi.*)

(SEAL.)

Extract, being sunuds in respect of the grain of the *Khoti* of Mouza Bondivde Turf Soundal Prant Rajapoor, entered in the Roz Kird* (daily proceedings) of His Excellency the Pant Pradhan under the heading of Dufate* Patra subordinate to Botkhat,† held before Naro Apaji at Poona the lunar date the 5 h of (A. D. 15th May 1774) *Rubilakhar* Soorsun Khamus Sabain Maya wa Alaf.

Balaji Govind, surname Apte, Gotra‡ Koushika, Sutra Hiranyakeshi,§ Shakha Taitirya, Mokadum‖ of Mouza Gothne Devache Turf Rajapoor Prant Rajpoor, having come over to the Hoojoor seat at Kusba Poona, represented that out of the third share belonging to Hurshet and Vitshet and Lukhamshet and Gondset Bin Mulshet Kohate consisting of *Khoti miraski, koolkarna*

---

* A general memo. book containing notes of occurrences and a register of letters, &c.

† A string of several *khatas* or distinct accounts.

‡ Family or race.

§ Epithet of Shakha.

‖ A title of Patel or managing authority of a village.

mvnpan, and *devdevaski** rights appertaining to the village of Bandivade Turf Stundal Prant Rajapoor, as also of the lands, house (or houses), rice, jungle and garden (lands), trees, together with the tenements deserted by a kool (contracting farmer or tenant), a moiety [or] a one-sixth portion of the entire village was sold to him by them of their free-will on receiving rupees one thousand three hundred and one as purchase-money, and executed a deed of sale in Shake 1863,† the name of the year being Khar Sunwatsure; that the enjoyment continued with him in accordance therewith, and prayed that the *Swami*‡ will be pleased to grant (him) Government letters of enjoyment on referring to the deed of sale. Taking therefore into consideration the fact of the sale of their free will by Harshet and Vitshet and Lukhamshet and Gondset bin Malshet Kokate to him of a moiety of their third share (or) a one-sixth share of the entire village in the *Khoti miraski, Koolkarna, manpan, devdevaski*, &c., rights appertaining to the aforesaid village, together with the lands, house, rice-land, *wurkus* jungle, and garden (lands) and trees, with the tenements deserted or abandoned by tenants therein, on receiving rupees one thousand three hundred and one, and the fact of a deed of sale having been executed which had been presented for inspection at the Hoojoor, and on referring to the said deed of sale, the Sirkar is graciously pleased to grant a moiety of the third share (or) a one-sixth share of the entire village as mentioned in the deed of sale, consisting of *Khoti miraski, Koolkarna, manpan*, and *devdevaski*, &c., rights appertaining to the said village, with the lands, house (or houses), rice *wurkus* jungle and garden lands, trees with the tenement deserted by *Kools* or tenants thereof. Therefore he, his sons, grandsons, &c., shall enjoy from generation to generation the *wattan*. To this effect run the sunuds which bear the lunar date the 15th of Jelkad.

2 Sunuds.

1 There is on record a copy containing particulars as regards the name.

1 To Mookadum of mouza aforesaid.

—

2

* Annual ceremonies in honor of the tutelar divinity of the village.

† A. D. 1771-72.

‡ Lord or master.

2 (Sunuds) emanated from Chitnis.

1 To the present and future authorities at the Turf Soundal Prant Rajapoor.

1 To Deshmook, and Deshpande of Turf Soundal Prant Rajapoor.

—

2

—

4

This sunud has emanated from the duly accredited agent, Poorundhar. The *nazar* agreed to in respect of the said *wattan* (Rs. 65) sixty-five has been paid into the Government Treasury.

Shreer Hoor (*i. e.*, entered)

Translated by me,

GANESH KESHAVA WAIDYA,

Translator.

(*Translation of Copy of an Extract in Marathi.*)

(SEAL.)

Extract, being a sunud on account of the *Khoti* of the village of Mouza Shiravli Turf Khed Talooka Sooverndoorg entered under (the heading of) Dufate* Patra subordinate to Botkhat† of the Roz Kird (daily proceedings) of His Excellency Rajeshri . . . Pant Pradhan [held) before Janardhan Apaji at Poona from the lunar date the 1st of the month of Moharam to the lunar date the 5th of Rabiool Akhir Akhir Sal Soorsah Khamas Sabain Maya wa Alafa (1175 4th March to 6th June 1775).‡

Ved Moorti Narayan bhat Thatai, Joshi and Oopadhya of Mouza Shiravli Turf Khed Talooka Sooverndoorg, having come over to the Hoojoor, and represented that from before there had been no

---

* A general memo. book containing notes of occurrences and a register of letters, &c.

† A string of several accounts.

‡ A. D. 1774-75.

wattandar khote for the aforesaid village and, (requested that) on receiving from him a *najar* (or present) according to his means, the *wattani khoti* of the aforesaid village should be given to him on terms being settled. Thereupon this sunud is sent to you. Should there be no *wattandar khote* for the aforesaid village, you will on enquiries being made, and on receiving the *najar* (or present) into the Sirkar, be pleased to give the *khoti* of the aforesaid village as *wattan* to the Ved Moorti. For this purpose (this) one sunud is sent over to Moro Bapooji, Talooka Sooverndoorg, the lunar date the 17th of Rabioul Aval (1175—18th May 1775).

Rasangi* Yade
Shrir
Hoor (entered)

Translated by me,
HARISCHANDRA SHAMRAO,
Translator.

15th March 1869.

(*Translation of Copy of an Extract in Marathi.*)

Extract, being sunuds on account of the village of Sooshairi Turf Khed Prant Dabhol Talooka Sooverndoorg, entered under (the heading of) Dufate† Patra subordinate to Botkhat‡ of the Roj Kird (daily proceedings) of His Excellency Rajeshri . . . . Pant Pradhan, held before Janardhan Apaji at Poona, the lunar date the 29th of Jelhej Soorsan Sit Sabain Maya wa Alaf (1176—20th February 1776).

Vinayak Mahadev and Appaji Mahadev, surnamed Sathais Wasishta Gotra (lineage) Hirankeshi Sutra (line) Taeetiriya Shakha (branch), *khotes* of Mouza Sooshairi Turf Khed Prant Dabhol Talooka Sooverndoorg, having come over to the Hoojoor at the fort of Poorundur, represented that on the administration of the aforesaid

---

* Memo issued by a duly accredited agent.

† A general memo. book containing notes of occurrences and a register of letters, &c.

‡ A string of several accounts.

Prant having passed to the Sirkar, they got the *khoti kamawishi** of the aforesaid village given to them from the Soobha thither they came and settled ; that thereupon, in the hope of improving the grounds swallowed in the jungles and by the sea, they obtained from the Soobha an assurance deed for increasing annually the tax upon such grounds, and laid out seven (or) eight thousand rupees towards (their) improvement, and having improved the grounds, they brought them into a flourishing condition; that, in consequence of the tenants of the village having become helpless from penury, and having deserted (the village, or) died, they themselves went on paying the Government assessment due by them, which brought them into great expense, therefore they went to Rajeshri Moro Bapooji, Mamlutdar of the Talooka aforesaid, and requested that, as there was no *wattandar khote* for the village, and that as there was a deal of expense incurred on account of their village, the *khoti* (thereof) should be made into a *wattan* and granted to them; that thereupon the *wattandar* ryots of the Soobha villages having been called and brought, enquiries were made, when the ryots stated that there had been a Dantya Mahomedan *wattandar khote* whose family became extinct, and that there was no *wattandar khote*. That therefore, having regard for the prosperity of the village, a *najar* (or present) of rupees five hundred having been received into the Soobha, terms were settled, the *wattani khoti* was granted, and letters written out and furnished in the year Arba Sabain (1174†), and also letters were written out and furnished by the Jamidars themselves of the Talooka aforesaid; that the *khoti wattan* accordingly continued with them, and they requested that we would be pleased to settle terms and grants from the Sirkar the *khoti wattan* of the aforesaid village, and to furnish *wattan patras* for enjoyment. Thereupon, taking into consideration the facts that the *khoti kamawisi* of the aforesaid village was given to them from the Soobha, that therefore they brought the village into a flourishing condition which put them to much expense, that they had been collecting in Government assessment, that (the family of) the former *wattandar khote* became extinct, and that therefore Rajeshri Moro Bapooji of the Soobha having

---

* The business of collecting the revenues.

† A. D: 1773-74.

received from them rupees five hundred, granted the *khoti wattan* to them, and furnished letters which they have brought and shewed to the Hoojoor, and, looking into them, we have been pleased to settle terms and grant to them from the Sirkar the *khoti wattan* according to the Soobha letters. Do you therefore continue to them and (their) sons, grandsons, and so on, from generation to generation, the *khoti wattan* of the aforesaid village and *manpan* (titles and privileges) and *hak lawajums* (rights and retainers) and *kanoon kayades* (rules and regulations) appertaining to the said *wattan* according to the practice which may have been prevailing in each of the villages of the aforesaid Talooka.

Sunuds.

1 In the name.

1 To the ryots of the aforesaid village.

Letters from the Chitnis (or correspondence).

1 To the present and future authorities of the country and writers of Soobha Dabhol Talooka Soovernadoorg.

1 To the Deshmookhs and Deshpandehs Turf Khed of the aforesaid Talooka.

4

Shreer

Rasangi* Yade.

The lunar date the 7th of Sawal (1176—1st December 1775.)

Hoor (entered.)

Translated by me,

BAL BHASKER SHINTRE,

Translator.

15th March 1869.

(*Translation of Copp of an Extract in Marathi.*)

Extract, being a sunud about the giving of the village of Mouza Walag Mahad Talooka Raeghar on *khoti* entered under (the heading

---

* A memo. issued by a duly accredited agent.

of Dufate* Patra subordinate to Botkhat† of the Roz Kird (daily proceedings) of His Excellency Rajeshri . . . . Pant Pradhan (held) before Rajeshri Janardhan Appaji at Poona, the lunar date the 29th of Jelhej Soorsan sit Sabain Maya wa Alaf (1176‡—20th February 1776).

(Seal.)

To Naro Gangadhar Pa'anday, the village of Mouza Walag Turf Mahad Talooka Raeghar having been given on *khoti*, this sunud is sent over. Do you therefore give the aforesaid village on *khoti* to the abovenamed (undermentioned) individual, and have the collection in respect of the village realized according to the practice (or usage) of the country. Should their be§ a *wattandar khote*, the aforesaid village is to be given to him. The village for which there may be no *wattandar khote*, is to be assigned to him (this individual). For this purpose (this) one sunud (was granted) in the name of Gunputrao Krishna; the lunar date the 22nd of Jelhej (13th February 1766.)

Rasangi|| Yad.

Shrir.

Hoor (entered).

Translated by me,

HARISCHANDRA SHAMRAO,

Translator.

15th March 1869.

(*Translation of Copy of Sanud in Marathi.*)

Extract, being a sanud entered in the Roz Kird (daily proceedings) of His Excellency Rajeshri Pant Pradhan (on) the lunar date the 30th of Sawal Soorsun Saman Sabain Maya wa Alaf at Poona

---

* A general memo. book containing notes of occurrences and a register of Letters, &c.

† A string of several accounts.

‡ A. D. 1775-76.

§ [Not?]

|| Memo. issued by a duly accredited agent.

held before Janardhan Appaji under the heading of Dufate* Patra subordinate to "Botkhot,"† in respect of the *khote* of the village of Venosi Turf Punchanadi.

Ved‡ Moorti Rajeshri Dhond Joshi Panchanadikar having represented that, in consequence of the absence from the village of the *khote* of Mouza Venosi Turf Punchnadi Talooka Sooverndoorg, the *khoti* had been given to him by the Soobha (authority) for management for ten (or) twelve years and that it should be so caused to be given (him) by the Sirkar ; the *khoti* has accordingly been caused to be given to the Ved Moorti for management, and therefore the duties appertaining to the *khoti* of the village may be taken from him, and the Dewan Dust (Government assessment) recovered from him according to the Moolook§ Shirasta. The *khoti* of the *wattandar khot* will be caused to be returned to him when he presents himself. To the address of Moro Bapooji, the lunar date 18th of Shawal. This has emanated from the duly accredited agent.

Shreer Hoor (*i. e.*, entered)

Translated by me,

GANESH KESHAVA WAIDYA,

Transla tor.

---

* A general memo. book containing notes of occurrences and a register of letters.

† A string of several *khatas* or distinct accounts.

‡ Image or personification of the Vedas.

§ Usage or practice of the district.

In the District Court of the Konkun at Tanna.

Appeal No. 89 of 1865.

KRISHNAJI GANESH, TRIMBUCK SAKARAM, and GOVIND SAKARAM DÂTYE, of Roha in the Rajpooree Talooka of the Colaba Sub-Collectorate in the Konkun District (original plaintiffs) ..... } Appellants.

versus.

Major FRANCIS, Superintendent, Revenue Survey; the Sub-Collectorate of Colaba; DAMODHUR WISHWNATH GAHANDAR, Khote Nive Purgunnah Ghosali, in the Rajpooree Talooka of the Colaba Sub-Collectorate in the Konkun District; and the COLLECTOR OF TANNA (original defendants) ..... } Respondent.

Rupees 201-8-0

For appellants, Ramchandra Trimbuck Acharya and Govind Baba Goorjar.

For respondent No 3, Narayen Bhasker Godbolai.

For respondents Nos 1, 2, and 4, Narayen Balkrishna Chitle.

This is an appeal from a decree by the Court of the Assistant Judge of the Konkun District at Tannah, C. B. Izon, whose judgment is in English.

The plaintiffs appeal on the grounds that—

(1) The Assistant Judge has held it established that the *khote* gave plaintiff the land in dispute as *dhara*, but that he was incompetent to do this; but this is wrong as there is evidence in the case that the *khote* can give a *dhara*, and by giving a *dhara* the *khote* did not injure the rights of Government to whom plaintiffs are willing to pay the regular assessments.

(2) As plaintiffs have held the land as *dhara* for 45 years, cannot now be made liable for *khote* profits.

(3) The defendants were not competent to claim *khote* profits, nor were such claimed from plaintiffs the first year after the Survey Settlement The issues for decision are :—

1 Did the *khote* confer on the plaintiffs' family a *dhara* estate ?

2 If so, can the mortgagee of the *khote*, the third defendant, impugn the grant ?

3 If the first issue be found in the affirmative and the second in the negative, then is either, and which, of the defendants liable for damages, and to what amount ?

My finding on the first issue is in the affirmative and for plaintiffs. I am of opinion that this issue is found by the Exhibits Nos. 15, 16, 17, and 32, and witnesses Nos. 37, 64, and 68, and by the long enjoyment of the plaintiffs as *dharekaries*. The grant was indeed not denied in the Court below ; it was only the legality of the grant that was disputed.

(2) My finding on the second issue is in the negative and for plaintiffs. I am of opinion that the mortgagee of the *khote* cannot question plaintiffs' title to hold the *dhara* any more than the *khoti* can do so. There being no clause of limitation or reversion in the grant of the *dhara*, I am of opinion that the *dhara* will endure at least as long as the *khoti* lasts. It appears to me that the question discussed in the Court below, *viz.*, whether the *khote* can create a *dhara* estate as against the Government, does not arise in this suit so long as the *khoti* continues. It is necessary to determine wheter the *dhara* created by the *khote* is held on a valid tenure as against the Government or not. If the *khoti* were to lapse, or by any process were to be destroyed, it would then be necessary to determine (if Government questioned the plaintiffs' title) whether the plaintiffs' title as *dharekaries* was a good one or not. But the third defendant, the mortgagee of the *khoti*, cannot question plaintiffs' title for he (the mortgagee) takes only what was left to the *khote* to mortgage, that is a *khoti* village in which a *dhara* estate had been already created by the *khote*. Under this view of the case, it was perhaps unnecessary to make the first and second defendants, defendants at all. The first, the Superintendent of Survey, merely denied the validity of plaintiffs' title, but this could do the plaintiffs no actual harm. The second defendant, so far as the acts imputed to him in this case are concerned, was acting, not as the possible reversioner of *khoti*, but as the authority appointed by law to assist the *khoti* (in this case a mortgagee in possession) in realizing for a sub-holder or cultivator the assessment due.

(3.) My finding on the third issue is that the third defendant, Damodhar Wishwanath, the mortgagee *khote*, is liable for Rs. 175-4. If the agreements stated above are sound, it follows that plaintiffs are not liable for this sum. Their pleader abandons the item of Rs. 24 4 in the plaint, on account of the difference between the market price of crops that were sold and the price which they actually fetched. From the third defendant's application No. 47, it is clear that it was he who set the second defendant in motion and caused plaintiffs' crops to be attached and sold.

Ordered.

Reverse Assistant Judge's decree ; award to plaintiffs Rs. 175-4 against third defendant, with costs.

The first, second, and fourth defendants to bear their own costs; because it was their conduct which encouraged the third defendant to raise the defence he has raised.

(Sd.) R. H. PINHEY,
Judge,

18th December 1866.

Copy of the High Court's Judgment passed in Special Appeal No. 92 of 1867, under date the 13th day of August 1867.

In this suit the District Judge has very properly decided that a mortgagee *khote* is bound by the act of his mortgagor prior to the mortgage, and that he could not, when in possession, as the representative of the mortgagor, raise the rental of a tenant to whom the mortgagor had leased the lands prior to the mortgage at a permanently fixed rental. It may be true a *khote* could give no lease which would endure after his own estate had ceased ; but this question will not arise in the present suit if the *khote's* estates were in existence when the increased rent was levied from the plaintiffs, as would *primâ facie* appear to be the case.

It has, however, been brought to our notice that the additional revenue exacted from the plaintiffs by the Revenue Officers who are defendants in this suit, at the application of the mortgagee *khote*, was never paid to that individual, as it is alleged that the village was attached by Government and was made *khalsa* in the course of

the year 1863.64, as shown by Exhibits Nos. 31 and 32. We have held that it is competent for one defendant in a suit to make an appeal, regular or special, against a co-defendant, as well as a plaintiff if he considers that the decision of the Lower Court, so far as it charges him exclusively and exempts his co-defendants, is injurious to him, and provided that, in the case of a special appeal, the alleged injury has been occasioned by an error in law or procedure which affects the merits. In the present case, therefore, to ascertain which of the defendants is justly liable to the plaintiff, it is necessary that we shou'd know the precise time when the village was attached, whether the attachment was permanent or temporary, and whether it put an end to the *khote's* estate ; and, further, whether the revenue for that year, which was exacted from plaintiff in excess by the Government assessment, was appropriated by Government or made over to the mortgagee *khote*. In elucidation of this subject, the dates on which the attachment of the crop was made, and when the sale took place, must be clearly ascertained and determined. As these questions of facts have not formed the subject of enquiry in the Court below, we refer the suit to the Lower Appellate Court, that investigation may be made and findings recorded on these several points, upon the receipt of which findings we shall be prepared to pronounce a final judgment.

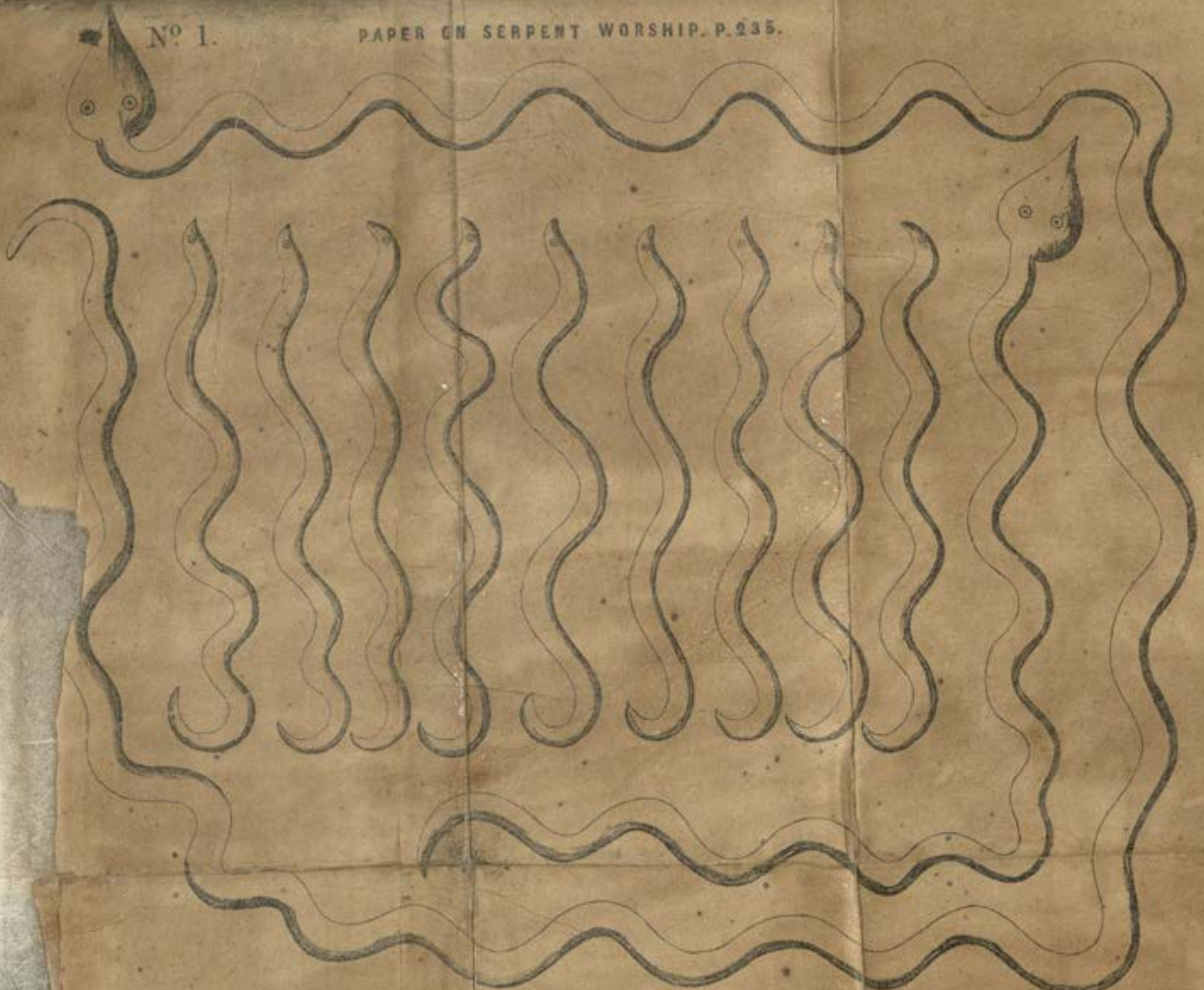
The District Judge should determine these points himself, and not delegate the enquiry to the Court of first instance.

(True Copy.)

(Sd.) K. C. BEDARKAR,

Deputy Registrar.

Nº 1. PAPER ON SERPENT WORSHIP. P. 235.



FIGURES OF SERPENTS.

№ 2

(1) धुपाटणें, Dhupátáni, v.v. [illegible]

(2) निरंजन, Niranjana, v.v. [illegible]

(3) हलकारत, Kalkárata, v.v. [illegible]

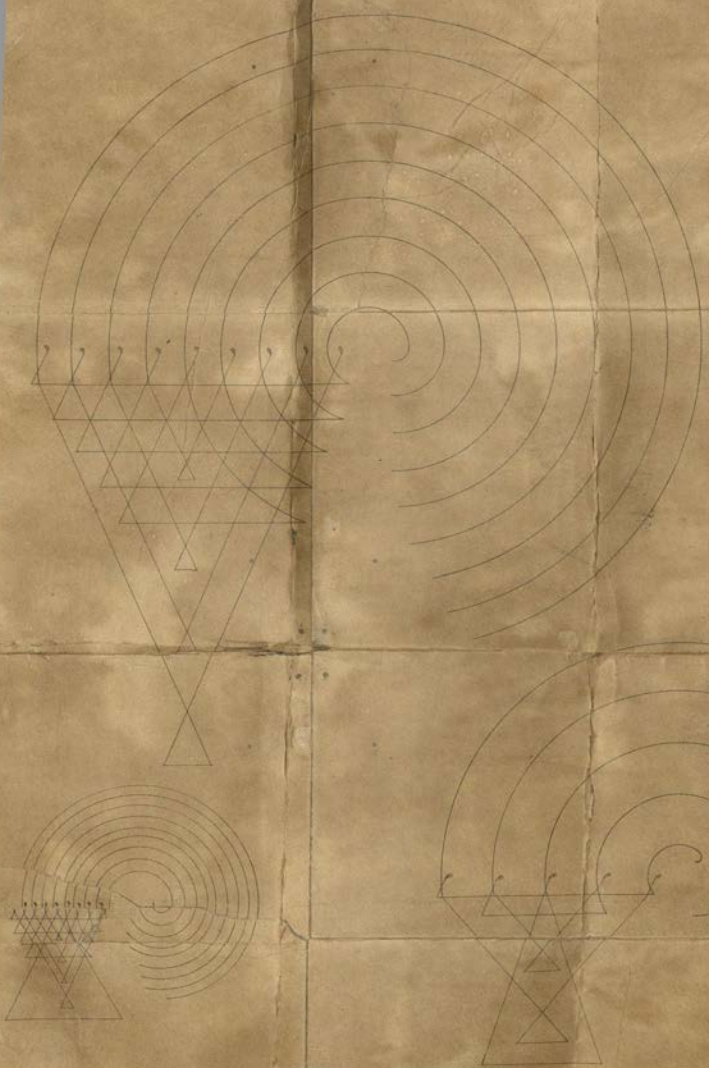
(4) अर्घ्या, Arghyá, v.v. [illegible]

(5) पेला (small) Pila, v.v. [illegible]

(6) पेला (large) Pila, v.v. [illegible]

(7) पंचपात्री, Panchapátra, v.v. [illegible]

FIGURE OF A SERPENT.



FIGURES OF SARASWATI.

5. PAPER ON SERPENT WORSHIP. P.263.

VISHNU ON SHESHA-NÁG.

TOP VIEW.

SIDE VIEW.

SHIVA & SERPENT.

FRONT VIEW.

SIDE VIEW.

SCALE NATURAL SIZE.

SHIVA & SERPENT.

№ 7.

PAPER ON THE SHRINE OF RIVER KRISHNA. P. 268.

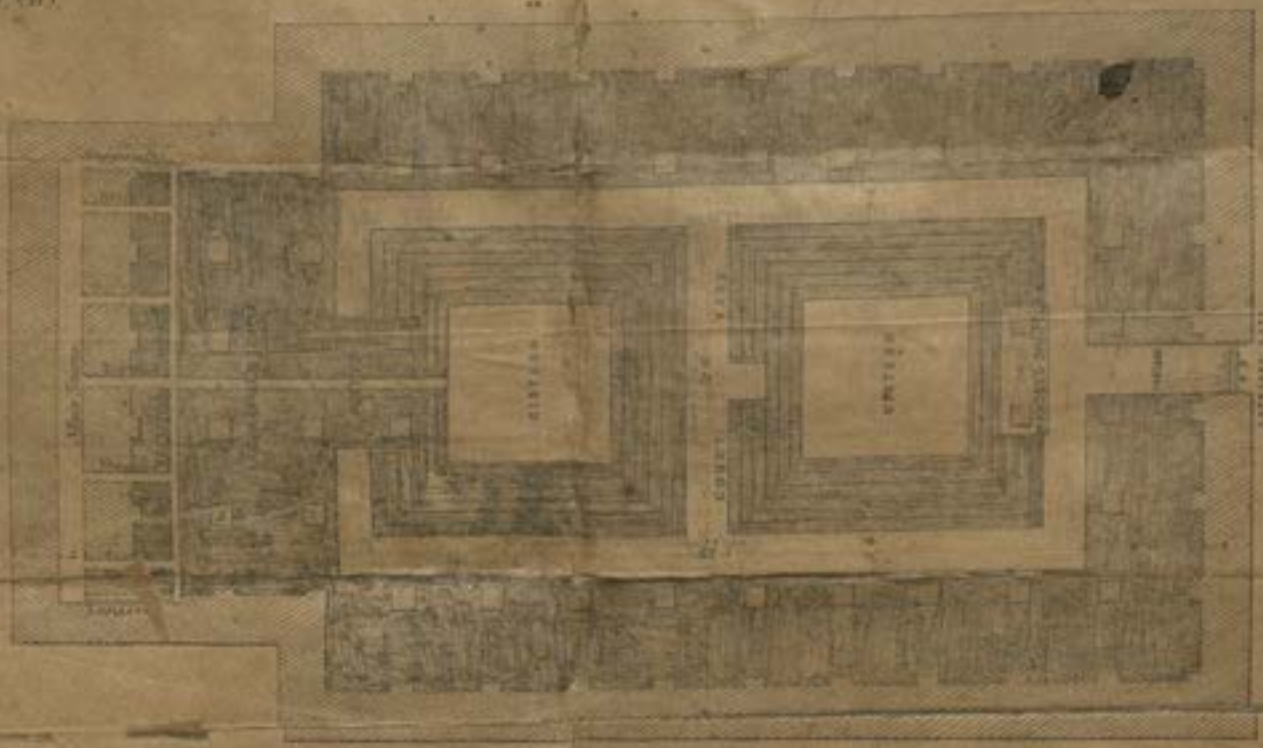
TEMPLE OVER THE SOURCE OF THE RIVER KRISHNA

AT

MAHABALESVARA.

SECTION ON A.B.

№ 7 (B).



00026283

Digitized with financial assistance from

HT Parekh FOUNDATION

An Initiative by HDFC

WITH YOU, RIGHT THROUGH

on 28 December, 2018